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STANDING COMMITTEE ON GOVERNMENT AGENCIES

ORGANIZATION

WEDNESDAY, 10 MAY 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Clerk: Brown, Harold

Assistant Clerk: Deller, Deborah

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, 10 May 1989

The committee met at 1024 in room 228.

ORGANIZATION

Clerk of the Committee: Honourable members, it is my duty to call upon you to elect a chairman. Do I hear nominations?

Mr J. B. Nixon: I move that Allan McLean be elected as chairman of this committee.

Clerk of the Committee: Thank you. Any other nominations? There being no further nominations, I declare nominations closed. Mr McLean, you are elected chairman of the committee.

The Chairman: Thank you, everyone. The second item on the agenda is the election of a vice-chairman.

Mr J. B. Nixon: I move that Margaret Marland be the vice-chairman of this committee.

The Chairman: Any further nominations?

Mr Farnan: Do we have to consent?

Mr J. B. Nixon: Yes.

The Chairman: Is there any further nomination?

Interjection: Is she running?

The Chairman: My understanding is that Mrs Marland has agreed to accept.

Mr Farnan: It is a very onerous position. We are looking to go forward with this in the absence of Mrs Marland.

The Chairman: Are there any other nominations? If not, I declare nominations closed and Margaret Marland elected as vice-chairman.

The second item on the agenda is the committee budget. There is a copy here. It is a detailed one and it outlines about three weeks of hearings, if necessary, during the summer.

Mr Velshi: The budget looks fine to me. If you recall, last year when we passed the budget, we just passed it the same way and some time during the term we came across a problem that we felt we should advertise one of our particular meetings in the press and there were no funds available in the budget for that. When I raised the matter at that time, you suggested that in our future budgets we put it in. I have a feeling right now that we should discuss this matter and add something towards it for that purpose.

The Chairman: I would like to ask the clerk. There are different

sections in the budget with regard to different areas. It could be transferred from one or the other.

Assistant Clerk: There is no provision in this budget for advertising and it has to be stipulated as advertising. If the committee wishes, it can be added in. It would be an addition of \$15,000.

Mr Velshi: For advertising?

Assistant Clerk: That is right. It is \$10,000 for the actual running of the ad in the papers and then there is fee of between \$2,000 and \$3,000 for typesetting.

Mr Velshi: If it is all right with you, I would like to move that we add that. We may not be using it, but I think we should have that provision there.

The Chairman: That is fine. Is that agreed? We will add the \$15,000 to the budget, of course keeping in mind that it has to go before the Board of Internal Economy for approval anyway, but that is agreed to. Then can we have a motion that the budget, as amended, is agreed to?

Mr Farnan: I have another item. I am wondering whether it reflects on the budget and perhaps should be dealt with prior to the budget.

I have here the report of the standing committee on procedural affairs and agencies, boards and commissions. This is the first session, 33rd Parliament. On page 49 of this document, it refers to the Ontario Human Rights Commission. That committee was to undertake a comprehensive review of the code and the commission. I am wondering whether or not it would be appropriate that this be added during the summer months.

The Chairman: That will be part of the budget. It includes any agency, board or commission that we do. If you look at some of the organizational charts, you will see that it is included in that.

Mr Farnan: Can you direct me to this, please?

The Chairman: It really does not have any bearing on the budget whether we do the human rights commission or whether we do four or five other commissions. They are all included in here.

Mr Farnan: Maybe I can direct your attention to the memorandum to all committee members of the standing committee on government agencies dated 10 May. Item 4 refers to the Ontario Human Rights Commission and it says, "Committee to decide what action to take." Can I ask you if this is being considered for the summer months?

The Chairman: That will be a committee decision whether we deal with that or not. The committee has had a list of various ones and it is on here and it will be up to the committee what priority it wants to deal with them in and that---

Mr Farnan: Will we be dealing with that this morning?

The Chairman: When we get down to consideration of outstanding matters, that is what we can consider at that time.

Can I have a motion then to approve the budget as amended?

Mr Velshi moves that the budget in the amount of \$55,553 be approved and that the chairman be authorized to present the budget to the Board of Internal Economy.

Agreed?

1030

Mr Farnan: I just received the budget this morning. I do not know whether this budget was circulated in advance but I certainly did not receive it until this morning. I have no intention of adding my name to a budget item that I have not examined and reviewed. When we are talking about \$55,000 of taxpayers' money, I am not simply going to rubber-stamp it.

I want to have time to look at this. Indeed, I am sure it will be a sound budget, given the experience of the past, but certainly I think it is a bad precedent for this committee to set simply to receive a budget on our desks and rubber-stamp it. I think we should take the time to look at it and come back to the next meeting and approve it.

The Chairman: I have a motion on the floor and I will put the motion if there is no further discussion on it. You are quite able to vote against the motion if you want to. All in favour of the motion by Mr Velshi? All opposed? Carried.

Mr Farnan: Is that a recorded vote?

The Chairman: I did not hear anybody ask for one.

Mr Farnan: Then I want to request a recorded vote, please.

The Chairman: The vote was taken before you--

Mr Farnan: I want to go on record that present at this meeting, I have asked for a recorded vote on a budget that the members did not receive until this morning.

Mr J. B. Nixon: You made your point.

Mr Farnan: No, I am making my point. It may be embarrassing for you to have to listen to the point, but I am certainly going to make this point.

Mrs Fawcett: But you were here half an hour to study it.

Mr Farnan: Let me tell you, the reality of the matter is that this budget was presented this morning. It is voted on. I am asking the chairman whether I can have a recorded vote of the members present who vote in favour of this budget now and those who vote against.

The Chairman: Okay, we can have a recorded vote. Would the clerk call the names, please?

The committee divided on Mr Velshi's motion, which was agreed to on the following vote:

Ayes

Fawcett, Nixon, Velshi.

Nays

Farnan.

Ayes 3; nays 1.

The Chairman: Okay, that is recorded and I am in favour of it.

We have one other housekeeping duty. I believe we should appoint a subcommittee. We have one from each party who is on that subcommittee. Mr Nixon, perhaps you would like to speak to that.

Mr J. B. Nixon moves that the business subcommittee be composed of Mrs Marland, Mr Breaugh and himself, that the said business subcommittee meet from time to time at the call of the chairman to consider and report to the committee on the business of the committee, that substitution be permitted on the business subcommittee and that the presence of all members of the business subcommittee is necessary to constitute a meeting.

Is there any further discussion on that motion?

Mr Farnan: Yes, I just want to have clarified the communication appointing the NDP member to the subcommittee. Where did that come from, please?

Mr J. B. Nixon: It came from the chairman.

The Chairman: Mr Breaugh had indicated that he would be willing to serve on that.

All those in favour of the motion?

Motion agreed to.

The Chairman: We have another motion here.

Mrs Fawcett moves that unless otherwise ordered, a transcript of all committee hearings be made.

The Chairman: Any discussion on that motion? All in favour?

Motion agreed to.

The Chairman: Now we get down to consideration of outstanding matters. I guess we can start with the Ontario Food Terminal Board. I have had some correspondence from them which I have forwarded to members. I was wondering what further input Mrs Grier had into it with the correspondence. Does anybody here know? Is the clerk aware of that?

Interjection.

The Chairman: I understand she wants to be kept up to date as to what is going on there, but she was the main one who was really interested in that. Does the research officer have anything to add?

Mr McNaught: As far as the food terminal board is concerned, I gather we are still waiting for this legal opinion.

The Chairman: Perhaps we should review this list here, come back

next week and deal with it, so you can familiarize yourself with some of the issues.

What else should we deal with next week? I had a feeling sometimes during the last session that we really did not get doing what I think we were supposed to be doing. We were kind of disorganized and did not really—I do not know. It just did not seem to fit in like I would like to see it. I would like to try and see some kind of itinerary.

If we are going to meet for only two hours a week, what we are allowed, let's meet for two hours a week and do something. I just do not like sitting around here waiting for somebody to come or get the committee going and then we just end up really not doing anything. It is frustrating to me.

Next week, let's try to have a positive agenda, something we can lay out for every Wednesday. I know there are going to be problems with some Wednesdays, for instance, 25 May Wednesday, because it is a holiday on the Monday and most caucuses will probably be meeting on Wednesday morning instead of the Tuesday as is normally the case. We are going to run into those difficulties, but I would suggest that we take the agenda and come back next week and let's try and get a positive agenda in order.

Anything further on the committee? If not, we will adjourn until next Wednesday at 10 am.

The meeting adjourned at 1035.

STANDING COMMITTEE ON GOVERNMENT AGENCIES

ORGANIZATION

WEDNESDAY, 17 MAY 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitution:

Daigeler, Hans (Nepean L) for Mr Ballinger

Clerk: Brown, Harold

Assistant Clerk: Deller, Deborah

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, 17 May 1989

The committee met at 1014 in committee room 2.

ORGANIZATION

The Chairman: I call the meeting to order. On our agenda today is the Ontario Food Terminal Board recommendation and some of the correspondence we have received. We have received a letter from the legislative research service dated 3 May. Do you all have a copy of that letter? It is a memorandum to me from Andrew McNaught. It indicates that it is hoped an agreement will be reached some time in June with the A and B units.

We wanted to have Mrs Grier here because of the input she has had with regard to the food terminal.

When I read this letter, I am wondering whether or not the process is going to continue today, because that letter indicates there is going to be a decision made by the food terminal board some time in June with regard to the A and B units. With respect to the C units, the board is considering different approaches from the tendering process which was used in the initial attempt to market these units. I am wondering where our discussion should lead today with regard to the food terminal. Is there any input from the committee?

Mr Velshi: I wonder if we could ask them to keep us informed of negotiations on a stage-by-stage basis so we know what they are talking about. We do not want to enter into some system where we find that a tremendous amount of compensation has been paid for changing the leases as they exist now, yet we would get locked into a situation that is no different from what it is now. I do not know whether we are entitled to ask them to see us before they make the final commitment. I would like to see that if that can happen.

Mr Farnan: I do not know. Negotiations are a very sacred process, you know. In many sets of negotiations, positions are not discussed even with the membership until there is a fairly firmed up situation. I do not know whether, if you were a party to a negotiation and had your negotiating people working on your behalf, you would want the information shared widely among all the people who are tenants or who occupy the area until it comes down to a fairly firm decision. Does that make sense? I do not know how much flexibility there is in these negotiations.

The Chairman: Which negotiations are you referring to?

Mr Farnan: I would like to know what negotiations are being referred to here.

Mr Velshi: I am referring to the negotiations that are referred to in this letter here, where the negotiations were initiated at our request. These tenants have leases that are going on in perpetuity. We are saying, "That's not what we would like to see. Would you kindly renegotiate the leases?" With the leases, the rent is so low and the term is so long that the leases are being sold for a \$1 million each in the transferring, yet we are unable to increase the rents; we are unable to increase anything because those leases are fixed.

They are negotiating these leases because we suggested that, so we are party to it in that respect. We feel that if they are going to renegotiate the leases, the tenants obviously will be requiring some form of compensation, because whatever negotiation takes place is going to be to the detriment of the tenants and to the advantage of the Ontario Food Terminal and, through that, of the government. So we are involved in those negotiations. I would just like to know, before they make another commitment for the next 50 years which we will be unable to correct again without paying compensation again, that we are informed.

The Chairman: I think there is one thing we should not forget here. We are here reviewing an agency, a board, the Ontario Food Terminal Board. What their internal negotiations are is really not our full responsibility. What we are to do is look at the overall procedures that have taken place there and find out if they are following the proper procedures as laid out by the ministry. If they are not, then we should make some recommendations on how we feel it should be done or how they could make it better. But as far as what they are doing with the negotiations internally with regard to the units is concerned, that is really not our jurisdiction, I do not think.

1020

Mr Miller: Mr Chairman, I think you are right on. That is the role we play. I think the board is reviewing its procedure and has formed some recommendations that we have already put in place.

Have we really put anything forward up to this point in time? Have we followed those recommendations to report back to the Legislature?

The Chairman: We have made some recommendations. If you look on page 66 of the summary of recommendations, there are our recommendations: items 13, 14, 15, 16, 17, 18 and 19.

Mr Miller: Okay.

The Chairman: I do not know what more we can really do.

Mr Miller: My view is that we should make sure those are carried out and maybe take another look at that after a period of time.

The Chairman: I think that is the only thing we can do.

Mr Farnan: I also agree, Mr Chairman, with your interpretation. I recall these concerns being raised when I was on this committee—I do not know—probably last summer or the summer before last, maybe.

Is there any power from this committee or the Legislature that says, "You can't renegotiate a lease" if the lease is going to be renegotiated along the lines Mr Velshi suggested?

The Chairman: We have several legal opinions on it. If you read the letter from Mr Dombek, you will find it pretty well explained there, the problems we have had over the years with regard to these leases.

Mr Farnan: What is the bottom line on the legal opinion?

The Chairman: The legal opinion is that it could be challenged in court; whatever takes place could be challenged in court. So it is up to the

legal people. Why do we not accept this summary of recommendations and have it reviewed within a year or something?

Miss Roberts: Mr Chairman, Ruth is not here and she seemed to have a concern I do not know about, because I was not on the committee and I have not heard her concerns. That is something I think is important. But there is another way of dealing with it and that is that an act of the Legislature does something about it. I think that is something Ruth may be considering—I do not know—when you have a lease in perpetuity. I understand the legal comments that have been made, but I do not know what her argument has been. It concerns me a bit and I am just putting forward that concern at this time.

The Chairman: For two weeks now we have been looking for the input. I asked for it last time—

Miss Roberts: And you have not received it.

The Chairman: I have not received it, so I do not know.

Mr Farnan: Has any communication been made with Mrs Grier about this?

The Chairman: I indicated to her last week that we would be dealing with it this morning at 10 o'clock and that I was hoping for a final resolution of this ongoing problem we are having in trying to get the report wrapped up.

Mr Farnan: Would it be helpful if I phoned her office?

The Chairman: We have tried several times and the assistant clerk is out trying again now. I was hoping we could get it wrapped up so we could get on with the rest of our agenda.

Mr Farnan: That seems fair.

The Chairman: While we are waiting for that phone call, are there any comments with regard to the agenda that has been passed around?

Miss Roberts: Is it all right if I do not show up on 14 June? Are you suggesting that we do them all on the same day?

The Chairman: No, no. The others will be in the order you determine. The Ontario Human Rights Commission is something we feel may be a priority. It depends on what the Legislature wants to do with it, if it wants it to go to the standing committee on public accounts or to our committee. I presume it would come to this committee for a review, but that is up to the Legislature.

Mr Miller: In my view, it is the key one, and I think we can spend quite a long time on it.

The Chairman: We have two hours on 31 May, which is when we first thought we would deal with it. This committee only has two hours a week to deal with it.

Mr Miller: Just one week for each?

The Chairman: The review of the background paper on rent review hearings—that is really all we are reviewing, the background; and then on 14 June we are getting into reviewing more in depth.

The information I have is that Mrs Grier would like it put over for another time so she can be here. She is tied up in a TV taping. My understanding is that we will not be meeting next week, because our caucus is meeting, and probably others, due to the holiday on Monday. We will not be meeting until 31 May, which is the review of the background paper on rent review hearings, so we could probably do that and the Ontario Food Terminal. It is only a matter of what input she wants to have. Does the committee agree with that?

Mr Velshi: Yes.

Mr Farnan: That is very generous, Mr Chairman.

The Chairman: Okay. Then perhaps we could review the agenda. I would like to have some input from the members with regard to that.

Mrs Marland: As you are reviewing the agenda, maybe this is the point where I should bring to the attention of the committee that it is my understanding that the three House leaders have come to an agreement that the Ontario Human Rights Commission will be the first agency this committee will review.

If I had to pick anyone who was going to respond to this, I knew, of course, it would be my friend Bradley.

Mr J. B. Nixon: Bradford.

Mrs Marland: Bradford; I am sorry. Anyway—

Mr J. B. Nixon: Is it Maggie or Marg?

Mrs Marland: As you know, the Minister of Citizenship (Mr Phillips) is more than happy to have one of the legislative committees review the Ontario Human Rights Commission, and you may also know that last week I took a motion to that effect to the standing committee on public accounts. Through the process of the three House leaders, I understand it is now the preference of all three parties that our committee here should deal with the review of the human rights commission.

I further understand that Mr Conway, the government House leader, will be placing a motion today in the House to refer that matter to us. That being so, I would request that this committee deal with the Ontario Human Rights Commission at the earliest possible date and certainly that it be the priority of the reviews of any agency before this committee.

Mr J. B. Nixon: With respect to my friend the member for Mississauga South (Mrs Marland), I do not have a problem with putting the human rights commission first on the agenda of this committee's business, but my understanding of the agreement arrived at between the House leaders is a little different.

My understanding—and I could be wrong; I was only going on the advice I received probably 24 hours ago—is that there was an agreement among the House leaders that the matter of the human rights commission and the questions that have been raised and the proposal made by the Minister of Citizenship be dealt with in the context of the estimates for the Ministry of Citizenship; and that the House leaders would subsequently agree which committee those estimates would be referred to but that such agreement about which committee had not been arrived at yet.

I may be out of date. It would not be the first time, but I think my recollection of the advice I received from our House leader is correct.

1030

Mrs Marland: Actually, you are correct if you are talking about 24 hours ago. That is what the discussion was yesterday morning, but it is my understanding that after question period yesterday the discussion had changed, because estimates is only three hours and that was not long enough for the kind of review that was necessary. The agreement I understand they reached, some time around 3 o'clock to 3:30 yesterday, was that it would not be dealt with in estimates but would be dealt with by a motion in this committee.

Miss Roberts: Because we do not know, and what Margaret is saying is most likely perfectly true, I would suggest that we do not waste our time discussing it any further but get the appropriate information from the appropriate people and deal with it on that basis. I think if we order ourselves today on the basis that it might be coming at us or might not—Let's not waste our time discussing something that may or may not happen. If we are told to do it, we will do it. Let us order our business as best we can, so the clerk and the researcher can deal with it.

The Chairman: Perhaps I could ask the question, then: Is it properly the understanding of some people that it would be referred to us during the sitting or after?

Mr J. B. Nixon: My understanding is that it is definitely during this sitting.

The Chairman: That would change our whole agenda, if that is what is going to happen. We will wait until we get word on that.

Mr Runciman: The estimates are only three hours, I think, but I doubt if it will be the estimates process.

The Chairman: It should not be. I think this is certainly different. Okay, we will leave that as it is for now.

The next item on our agenda is to deal with the Ontario French Language Services Commission we had looked at. I met with Cynthia Smith, our researcher who was with us during those public hearings held in room 151 in March. We had a couple of recommendations. However, others may come from the committee that we would like to hear about, so we could have a discussion with regard to the results of those hearings. I guess I was kind of waiting for Mike Breagh, but I do not know where Mike is.

The other thing I would like to clarify is if we should we go in camera to deal with it or if we should stay in open committee.

Mr J. B. Nixon: The agreement was that we would go in camera. I think we should go back before we begin the public hearing process, as we had agreed to do.

Mr Runciman: I would like a motion to that effect, Mr Chairman, which I will oppose. I think there has been too much effort and attempt by this government to cover up this issue, to have meaningful public discussion about what is happening in terms of language services in this province, the cost implications, social implications, etc. This is another effort to further that program of concealment.

This is a government that, when it took office in 1985, suggested it was going to be very open in terms of what occurred in this government, laying all the cards on the table, a totally new approach to government in this province. This is the sort of tactic that is being constantly utilized when we talk about French-language services. I think it is totally inappropriate. Let's get it on the table. Let's air it in public. What are we afraid of?

The Chairman: Mr Nixon moves that the standing committee on government agencies conform to the original agreement that was arrived at in this committee, that following the public hearings on the matter of the Ontario French Language Services Commission it would go in camera to discuss what we may or may not do.

Mr J. B. Nixon: In support of that motion, I would say it was not a government decision. It was an agreement arrived at by all members of the committee who sat here prior to the beginning of the public hearing process. To allege that this has anything to do with the government's manner of operation, I think, is totally incorrect. I think all members of the committee understood the nature of the agreement and the reasons for the agreement. All I am suggesting is that we abide by the agreement we had arrived at among all three parties.

Mrs Marland: Perhaps, Mr Nixon, you could explain the details and nature of the agreement, because I have the same concern as Mr Runciman that it is not necessary to discuss this in camera. Before I would support a vote for it to be in camera, I would like to know what it is you are trying to get at. What is the necessity for it to be in camera? You said there was a prior agreement by all members of this committee. As a member of this committee, I have to tell you that I do not recall that, but I am quite happy to have you refresh my memory.

Mr J. B. Nixon: It may be that some of us were not present. I certainly was present when the discussion took place about when the public hearings would take place and what we would do following those public hearings. I only bring the motion to oblige Mr Runciman, because he seems to believe a motion is necessary. I thought the matter was a foregone conclusion, as we had all agreed upon it.

Certainly Mr Breagh was here. It is unfortunate he is not here today, because I am sure he would remember it. I have not asked other members of the committee; some of them may remember it. I just find it bizarre that at this point, having had an agreement and an understanding about the manner in which the committee would operate, you now disagree with that agreement. If you only want it ratified by a formal motion, and that is the way I interpret Mr Runciman's request, I would be quite happy to move that motion. If you see it as a contentious item worthy of debate, I have to remind you that there were at least a majority of members of this committee present and they were from all three parties when that agreement was arrived at.

Mrs Marland: To go back in camera?

Mr J. B. Nixon: Yes. I do not remember the date, frankly. I just remember being in a committee room with a lot of people.

Mrs Marland: Do you remember why?

Mr J. B. Nixon: I cannot remember the debate that took place or the discussion. I just remember that the agreement was arrived at.

Mr Farnan: Mr Runciman's comments were interesting when he suggested that if we were to have open and accessible government, it would be a new phenomenon for the province. I agree. I do recall the Premier (Mr Peterson) campaigning with his sleeves rolled up and his tie undone, reaching out to the people as he campaigned: "Hi, I'm Dave. I'm open, I'm accessible, and this is a new era in government. It will be an open and accessible government."

Mrs Marland raises a good point. Whenever you are going to discuss something in camera, you would say, "We're going to discuss this matter in camera because of these particular points." A city council discusses items in camera because it has to do with personnel or it has to do with a land sale. There are certain specific items and the community recognizes why they are in camera.

This specific item, the Ontario French Language Services Commission, is something that I think has broad implications and considerable interest across the province. It is delicate and sensitive, yes, but I do not think that as legislators we should be afraid to express our views in an open forum.

1040

The argument Mr Nixon puts forward that it was agreed upon some time in the past is a very poor argument. New Democrats, of course, are very flexible; we are always prepared to look at issues in light of information available to us. If Mr Nixon was saying it was agreed in the past that this would be in camera because of certain very good reasons, and those reasons were still pertinent, then New Democrats would say, "Yes, that makes good common sense." But to use the argument that it was agreed in the past and therefore it must be agreed today is a very poor argument.

I was not party to the discussions in the past, so I come to this with a fresh and vigorous mind and an open mind on the issue. If Mr Nixon can say, "Look, here are the good arguments for dealing with this in camera," then I think I can support it, but with the lack of those good arguments, I think, wherever possible, the business of the provincial Legislature and its committees should be in an open forum, with our views expressed openly, no matter how sensitive and delicate the issue.

I will support Mr Runciman's request that the discussions be open. I put in the proviso that that is unless arguments are put forward to say, "Here are the very good reasons why it should be in camera." I have not heard those arguments; unless they are forthcoming, I will be supporting Mr Runciman.

The Chairman: We have a motion on the floor and we have had a good discussion from each party. The motion still stands. We might as well put the motion.

Mr Runciman: I have one question and then a request. Going in camera, I assume, is going to require closing the door as well. That is a practical consideration. If we are going ahead with the vote, I request a recorded vote.

Mr Farnan: Before there is a vote, I made a specific request in my statement and if Mr Nixon would like to respond to my request to put the arguments on the table, the good, solid arguments for having it in camera, I would like to hear them before the vote.

The Chairman: Mr Nixon, is there anything further?

Mr J. B. Nixon: Two quick points. Although I understand that my legislative career is much shorter than those of many who are present, it has been my experience that frequently, regularly, when a committee debates, discusses and considers the recommendations it will make after having had public hearings, it does go in camera. People will tell me otherwise, I am sure. There are exceptions to every rule. I would only say that that has been my experience, notwithstanding the fact that we had some discussion about recommendations regarding the Ontario Food Terminal in public today.

Second, as I say, there was an agreement which was arrived at within the committee when we considered the nature of the public hearings we would have on the Ontario French Language Services Commission. That agreement was reiterated privately on the day of the public hearings among some members of the committee. I do not mean privately in the sense that it was behind closed doors, but we just casually said, "Oh, by the way, remember we are going back in camera after the public hearings." People nodded and agreed; same thing after the public hearings took place. I took it as a given that this committee would abide by the agreement it had arrived at.

Different members, as I recall, had different views about why we should go in camera. As I was listening to the member for Cambridge (Mr Farnan), I recalled some of the suggestions his colleague the member for Oshawa (Mr Breaugh) made, that it was a matter of some sensitivity, some delicacy, a matter on which certain members were prone to, for lack of a better term, engage in soapbox rhetoric which tended not to serve the public good or the aims of the committee.

I am not sure whether I agree with that, but I would agree that as we had arrived at an agreement among the committee members, different views being expressed by committee members, all in favour of going in camera, that we should abide by it.

Mr Daigeler: Not having been part of the discussion, being only a substitute today, I think it is fair for me to abide by an agreement that was made earlier. However, I must say I have some difficulty with the idea of having this in camera, but as there was apparently an agreement before and there must have been reasons for it, some of which were explained by Mr Nixon, I think it is only fair to stay with that position.

Mr Runciman: I do not think Mr Nixon has answered the request in respect to reasons. He shot himself in the foot with respect to the fact that we did discuss the Ontario Food Terminal Board in open meeting.

I think this goes back a long way. I was in attendance at the meeting when we were planning this exercise to meet with the Ontario French Language Services Commission. We had some discussion, members will recall, about the way Bill 8 was dealt with in the Ontario Legislature. If we recall Mr Breaugh's comments, he expressed the view at that time—this was all in camera; I grant you that—that it was not one of the good marks in terms of the history of the Ontario Legislature: the fact that there was no meaningful debate, no reference to a standing committee to take a look at what the implications of that legislation meant to Ontario, and no recorded vote. It was a voice vote with very few members of the House present. The whole issue has offended a great body of people in this province.

The way the government representative on this committee is trying to deal with this aspect as well is a continuation of that approach with respect to this issue. I do not think any of us would deny that this is indeed a sensitive issue.

But we are all elected and we are all big boys and girls and we have to bear the responsibility for what we say or do with the electorate come the next election. I do not want to see a continuation of what I describe as a coverup in respect to dealing with the French-language services issue in this province. I think it is an issue that is long overdue for public airing and full public discussion. What are the implications? Where are we going? All of those aspects of it merit open, public discussion. That is my case.

Mrs Marland: There is a certain irony here. First, we invite the public to come here and bare their souls and put it on the record. What a phenomenal irony that when we get to the point in the committee of discussing what the public has said in public, we want to shroud and hide behind an in camera session. Frankly, I think it is hypocrisy at its worst.

Nevertheless, unless Mr Nixon can produce a Hansard where it was decided that this session would be in camera by a unanimous vote of this committee, this committee is not bound. We are in another committee session today. We can place any motion we want today about how today's meeting is held. If we had a prior agreement that this committee meeting on today's date be held in camera, we could still vote on it today under the rules of order this committee follows, because based on what we may have heard during the public sessions or on something we have learned this morning, based on anything, we have a right at any time to move this committee in camera or to keep this committee in public session.

Frankly, having had two representatives of the opposition party ask for a reason and not being given a reason other than that there was prior agreement, if there was prior agreement and it was unanimous, based on where we are today I would still, as a member of our caucus, not be supporting going in camera.

It is time the public knows what it is we are discussing on this subject, and if everything on this subject is so good and so great for the province, we should all be proud, we should all be willing to discuss it in public.

1050

When you say, Mr Nixon, that this position is not a position of the government, that it is not the government that is saying it must be dealt with in camera, then I guess we will see that when we see how the government members vote, because whether you like it or not, the six members who sit on this committee do represent the government and how they vote is how the government wants them to vote. We are not so naïve as not to realize that.

I think it is very important that this meeting be held in open session and be on the record once and for all, at least for those of us who are here this morning.

Mr Miller: I have listened carefully to the debate here. Does this committee want to get political, or do we want to make some recommendations to the Legislature where we can get political? It appears to me that politics are surfacing here when we should be dealing with an issue that is very important to Canada in which Ontario has a role to play.

If you want to throw it out on the floor, which I think our third party is trying to do, then that is fair enough. I am a big boy. I was elected the same as you were, and I will go back and report and defend the government's

direction. As a matter of fact, I had to defend it yesterday, and I did not have a chance, in my own riding.

I can sense it is a very divisive issue. If you want to screw it up, that is up to you, but it is not up to me, and I want to go back and make some recommendations to the Legislature which we are dealing with here today. It is very important and I want to do it in a fair manner.

I would like to hear the chairman, because I think you have been available to all. We have new members here who are maybe not expressing the views of their parties. I heard the official opposition make that point. Mike Breaugh was a member; very fair, in my estimation, and not playing politics but acting in the best interests of Canada and Ontario.

It is a matter of what you want to do. In my view, I think we should do it in camera but recommend that we then have an opportunity to debate it in the House so everybody can see it. I am not trying to hide behind it. We will defend it, but I think that in committee it should be dealt with as has been suggested by my friend and I will support that.

The Chairman: I would like to say something at this time. As you are well aware, I have been here through all the discussion. When we first decided to bring this forward, we decided to have some hearings, and then after those hearings we would make the decision at that time whether we would go in camera. Normal procedure is that you do go in camera after you have the hearings. That is normal procedure, but it does not always happen. There are many cases where it does not happen.

I think I indicated at that time that we would make that decision whether we would go in camera or not. That time for decision is now. We have a motion to that effect.

Mr Farnan: There are a couple of comments I want to make. I take exception to the reference to my colleague Mr Breaugh.

Mr J. B. Nixon: As being fair?

Mr Farnan: Mr Nixon implied that Mr Breaugh had suggested that individuals would be playing politics or getting up on a soapbox on the issue. Mr Breaugh is one of the elder statesmen of this Legislature. He would never impute ulterior motives to a colleague. I think we all recognize that he bases his arguments and his judgements very soundly. I think Mr Miller was correct when he made the observation of Mr Breaugh that he does not play politics, and that is in exact contradiction to what Mr Nixon suggested.

Mr Miller used a phrase that I think is very significant to this debate and this vote we are about to take. He said, "I am prepared to defend the government direction." It is becoming increasingly clear to me that the government direction is that this session be in camera. Mr Daigeler suggested that he was not here in the past but that he was going to live by a previous decision. I hear the chairman saying, "There was no previous decision made." Mr Daigeler outlined all his concerns, and rightly so, because I am sure the constituents of his area would be hopeful that these issues be dealt with openly.

I think it comes down to this: What have we got to say in camera that we would not say publicly? Are there two messages? Is there one message that in discussing this particular issue we would say one thing, but when we go out to

our constituents we would say something else? If that is the situation, then the individual members have problems. If on the other hand what you have to say in camera is exactly what you would say to your constituents, of course there is no problem, because you can have honesty and integrity in what you have to say privately and publicly. The absolute guarantee that individuals do not play doublespeak is that the session be held in open session.

New Democrats, I think, have always taken the position that what we have to say either as members or as a caucus does not change from what we have to say in committee to what we take out to our constituents. This is a fundamental issue, and I think it is very clear from Mr Miller's comment that he is prepared to defend the government direction, not some agreement that was made between House leaders, not some agreement that was made in the past. There is a very specific government direction to the members of this committee, which has been enunciated by Mr Nixon this morning and supported very clearly by Mr Miller, and I suspect some of my other esteemed and revered colleagues will demonstrate that commitment when it comes to a vote, but it is a direction that is wrongminded because it does an injustice to the people of Ontario who want to say, "Even if this issue is sensitive, have the courage to deal with it openly."

The Chairman: Could I bring you back now to the—what we are discussing is the French-language commission. It is to be redundant come November. We have a couple of recommendations that have been made by our researcher, whether we continue with the commission or whether we recommend some changes in it. Do not forget, it is the commission we are dealing with here.

Miss Roberts: Just briefly, I have listened very carefully to the comments of everyone. It is very important that we look at what is being said, because as everyone has articulated, this is an important concept. Mr Chairman, far be it for me to side with you on occasion, but you made it very clear that the usual is to go in camera; not going in camera is the unusual. We have heard arguments that indicate we are doing something that is incorrect, not appropriate and should not be done, but if the usual is in camera, then we are not indicating that it is inappropriate.

What concerns me is that 25 to 35 minutes of our time has been taken to deal with this. It is a very important issue and I hope this is the only time I have to deal with it in this committee or in any other committee. We have very important things to deal with and the French-language commission is a very important part of that.

I support that we do what is usually done, as you have indicated, to go in camera, because it is very clear that our recommendations come out of that. Everything that you wish to say and every party that wishes to put its concern has a right, but, more important, every individual member of a committee has a right to put his concerns about any recommendations that come out, or for the fact that no recommendations come out, on the record. I support the fact that we continue in camera in an appropriate fashion and do it as expeditiously as possible.

1100

Mr Velshi: I am going to go off track like everybody else here. The opposition members keep on reminding us that we vote as our party whip says, but I have yet to see any of the members in the Conservative or New Democratic parties voting against what their party whip—

Mr Farnan: Where were you on Meech Lake? Where were you on the abortion issue?

The Chairman: Order.

Mr Velshi: I think in all fairness I must say what I have to say. I do not say you are following your party whip's instruction. I suspect your party has taken its position and you agree. You must grant that sometimes our party has the position it takes philosophically and we agree with what the party does. You must accept that, so do not try and bully us into voting or embarrassing us. We vote the way we feel, which happens to be in line with our party philosophy—

Mr Farnan: We vote the way we are told.

Mr Velshi: In terms of what we are doing here, all we are going to do is recommend to the House what we are saying. This voting is going to open up in the Legislature when the bill is debated. Every member then can say publicly what he wants to say. The member for Markham (Mr Cousens) had a beautiful thing to say about French language the other day. I expect we are going to see more things like that happening, but if you are talking about saying it in public, the House is the place where you will all be viewed on television; everybody in their drawing rooms will be watching us. So there is a motion and I think we should get on with it.

Mr Runciman: I think I have to respond to some of the comments that were made. Miss Roberts mentioned the usual versus the unusual. I think that this issue is unusual, and Mr Breaugh made that point in deliberations this spring; I certainly did. In essence, all the debate in respect to Bill 8 and for the most part with respect to this issue, getting prepared and so on, has been done in camera. Most of the comments, good and bad, have been behind closed doors. I think that indeed does not make this a usual kind of issue.

I think most of us in this room would agree it is not a usual kind of issue. If you look at the debate that transpired—if you want to call it a debate—in Bill 8, there was no critical scrutiny of the bill, simply a few people getting up and saying beautiful things about the extension of French language services in the province. No one talked about the implications or what it meant down the road.

I think this is indeed unusual. For Miss Roberts to express a concern about devoting 25 or 30 minutes of our time to discussing whether this should be in public is, I think, inappropriate as well, because there sure as the devil has not been enough public and open discussion about this issue for what it is costing taxpayers in this province, what the social elements may be as well as a host of other aspects. I do not accept that criticism either.

We have heard from Mr Miller and Miss Roberts, and I guess Mr. Velshi as well, that everyone is going to have an opportunity in the House when the report comes back. We know that is not going to happen. Anybody who has been around here for any time at all knows that when we go in camera, we are going to hear comments from perhaps Mr South, Mr Miller, Mr Nixon, Mr Daigeler, Mr Velshi and others. We will not hear those comments in the House; they will remain quiet. For the government, we will hear perhaps from Mr Grandmaître and his parliamentary assistant and maybe the House leader. That is it. To suggest we are going to hear from these members saying the same things in the House as they say in camera—I share the concern expressed by my colleague the member for Cambridge.

If you believe in what the government is doing, if you support what the government is doing in this respect, you should have no reservations whatsoever about saying those things on the record so government members can go back to their ridings and say, "Look, this is what Gord Miller said in committee with respect to the extension of French-language services or the extension of the life of this commission. This is what Brad Nixon feels about it. This is what Hans Daigeler feels about it." It is on the record. If they indeed feel as strongly as they do, they should have no compunction whatsoever about moving ahead in that way.

Mr Miller suggested that doing this is playing politics. Maybe there is a bit of that, but I know I have some strongly held views with respect to this issue and if there is one major regret I have about my eight and a half years in this House, it is the way Bill 8 was handled by our party and by all parties in this House where party discipline was the rule of the day. There was no meaningful debate.

It is a bill that has tremendous implications for this province. We can have this tsk-tsking going on that it is okay to shove a piece of legislation right through this House. The member for Don Mills (Mr Velshi) is suggesting that it is okay to send a bill through the House without any meaningful debate, without any reference to the committee and spend untold millions of dollars. It has significant social implications, but that is okay for the member for Don Mills and it is okay for the Liberal members on this committee to continue to deal with this issue in camera, behind closed doors and out of sight of the public. I do not agree.

The Chairman: I think we have had a good discussion. I would like to get around to calling the vote. I want to make clear that we are dealing with the Ontario French Language Services Commission, not Bill 8. As far as I am concerned, it is not as complicated as what I have been hearing. I think it is rather simple, and whether we go in camera or not I do not think makes any difference as to what the outcome is going to be. However, I would like to call the vote now.

Mrs Marland: A recorded vote?

The Chairman: Recorded vote.

The committee divided on Mr Nixon's motion, which was agreed to on the following vote:

Ayes

Daigeler, Miller, Nixon, J. B., Roberts, South, Velshi.

Nays

Farnan, Marland, Runciman.

Ayes 6; nays 3.

The Chairman: I will vote with the majority of the members on the committee. As chairman, I think that is fair.

The committee continued in camera at 1107.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW: ONTARIO FOOD TERMINAL BOARD
RENT REGULATION

WEDNESDAY, 7 JUNE 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Mr Breaugh

Haggerty, Ray (Niagara South L) for Mr Ballinger

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

Richmond, Jerry M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, 7 June 1989

The committee met at 1014 in room 228.

AGENCY REVIEW: ONTARIO FOOD TERMINAL BOARD
(continued)

The Chairman: If we could call the meeting to order? We have today the Ontario Food Terminal Board and the Ontario French Language Services Commission. The food terminal board is first and we have Mrs Grier who has had a lot of input into this committee and we wanted to hopefully get it wrapped up today, if we could, so we can get a report prepared.

There has been some correspondence from Wolfgang J. Pazulla, a barrister, with regards to the expansion of the C units.

Perhaps, Mrs Grier, if you have some input or would like to lead off with some recommendations that we could make.

Mrs Grier: I really appreciate the opportunity to be here and the fact that you postponed discussing the terminal board until I could be here. It is very generous of the committee.

As you say, I have had an ongoing interest in this and since the committee did its recommendations, I have tried to keep on top of the implementation of those regulations. You may remember that the last time we met was around the issue of the expansion of the terminal and that the kind of tendering process the board had initiated resulted in no realistic bids. So the board made the decision not to expand, which was in opposition to the recommendation of this committee, the wishes of the government I think and certainly of the subtenants. After that, five subtenants got together, hired Mr Pazulla and made a proposal to the board that they would be prepared to put up the capital cost of five new units if the board would agree to that kind of expansion. I think one of the letters that you have circulated is their proposal.

The board met with them and seemed open to that, and I guess they were optimistic that was in fact going to happen. But the board is meeting tonight or tomorrow night. It is certainly the sense of those tenants that the board is again going to go through a tendering process with a reserve bid that is very high, and with the requirement that the potential lessees of the new units cover some of the capital cost of expansion of the parking and other facilities that are not directly related to the new units and also, that the board is not prepared to share with the potential occupants of the new units what the rent might be. They are being asked once again to bid in the dark without being able to determine what their ongoing costs to lease a unit would be.

My fear is that in fact we are not a great deal further ahead than we were when this committee first read its recommendations. As you can see by the letter that I think has been circulated, on 2 May I wrote to the Minister of Agriculture and Food (Mr Riddell), sending him a copy of the proposal from the five potential new tenants and asking the minister to give me an opinion as to whether it was within the sense of the recommendations of this committee

because I did not want to see those new potential lessees get into a permanent lease arrangement that would be as bad as the one we were trying to change. Not being a lawyer, I was not sure whether their proposal, which called for some security of tenure, was in fact getting us back on the merry-go-round of perpetual leases.

There has been no response from the ministry to that letter of mine of 2 May. So I am a little at a loss to know what the committee can do at this point, other than make a strongly worded report expressing our dismay at any real lack of progress or implementation of the recommendations that we made almost a year ago now, I think.

But that is my sense of where things are at and I am sorry that it is not a very encouraging report.

Mr Miller: In order to be able to make many major changes that have to be made, I think there has to be a change in the legislation. I believe that was the bottom requirement. The corporation is a corporation which is separate from the government. They are directed by the board of directors. I thought there were some changes. Mrs Grier, are you saying that you do not like this proposal?

Mrs Grier: I like this proposal, I like the fact that it is expansion. I have some concerns about it. I think that it has come from only five subtenants because they were the ones who were prepared to put up some money. I would much prefer broader expansion; if there is room for 10 units, let's find a way of doing 10 units. From their proposal as I understand it, they are asking for some security of tenure. In exchange for putting up the capital funds—I can understand that from a business point of view—I want to be assured that we are not just handing over to them a perpetual lease, which we have been trying to eliminate through the A and B units. So that was why I had hoped to get some answer from the ministry and have not succeeded in doing that.

1020

Mr Miller: Was it 2 May you sent the letter to the minister?

Mrs Grier: Yes.

Mr Miller: And he has not responded to this point in time.

Mrs Grier: But I agree with you; I think legislation has to be the answer. Both the committee several years ago and this committee suggested the board enter into negotiations with the current leaseholders to try to eliminate the perpetual leases. It is obvious that has not gone anywhere.

We were told when we discussed it before the choices were either to pay massive compensation or change the legislation. We tried the negotiation route. It does not seem to me it is going to work. Maybe the time has come to say legislation is the only way to do it and get on with it.

The Chairman: Well, we have to have a recommendation worded fairly strongly, I would think, in our report. I am not so sure what effect it will have, but I think that is our only alternative as a committee. We have dealt with it, and we have dealt with it again, to try to see what Mr Collins and his group from the food terminal are going to do.

In the 9 March letter from the chairman of the board of the Ontario Food Terminal Board, it says, on page 2, with respect to actual C unit leases, and that paragraph there spells it out, "The board would not be prepared to change the assignment clause nor would it be prepared to determine the yearly rent on the same basis as in the A and B unit renewal warehouse lease." Copies were sent to the five people who were interested. It is signed by the chairman of the board.

I do not know what is going to happen. It just seems to be sitting and nobody can do anything, so I am wondering what our recommendation should be.

Miss Roberts: If I might briefly, does someone have a copy of that so I can look at it? I have some concerns, and I assume now that the other honourable member is here—

The Chairman: The letter was dated 9 March. That was to the solicitor for the five people.

Miss Roberts: I apologize. I was negligent in not bringing my package concerning this.

The Chairman: Our duty is to try to make some recommendation that has some teeth in it. I am not so sure. There is a real complication here. We have our lawyer's opinion, and the board has said the legislation has to be changed. Maybe that should be our recommendation.

Mrs Grier: You say 9 March. Do you mean 7 March from the ministry, or or am I looking at the wrong letter too?

The Chairman: It is dated 9 March 1989. It is addressed to the solicitor, Wolfgang Pazulla, and it is signed by Allan Collins, chairman of the board. It is copied to the five people who made their proposal. This is the board's letter back to them after they made their first presentation, I guess.

Mrs Grier: Since then they have they met and have come back again with another proposal.

The Chairman: Yes, but there has been no reply to that letter.

Mrs Grier: That is what the board is going to be considering, I think, in the very near future, but the sense of those subtenants is that the board either is, once again, going to go through a tendering process that is impossible for them to meet or is going to turn down the proposal.

The Chairman: That is right. We have investigated the food terminal. It is our duty to make a recommendation, not really to get involved between the five companies and the food terminal. But job is to make a recommendation of how we feel, if we feel there should be an expansion, how that should take place, or simply recommend to the ministry that we feel there is need for expansion, which I believe we have already done, and nothing has been done on it.

Mrs Grier: The stumbling block has been the ministry's inability to put up the capital costs of the expansion. I think if the ministry said, "Yes, we think it should expand and we are prepared to put up the capital and recover that in our leasing arrangements," then the board would have no choice but to proceed with expansion. As long as the board is being told, "Sure, it

would be nice if you expanded, but you have somehow got to find the money to do it," then the board effectively can say, "Well, we can't find a satisfactory way of doing that."

Mr Velshi: I am not too sure if that is correct, as I understand it. Initially, when the board wanted to raise some funds, it did so privately, but it had the guarantee of the government, but the government only funds the guarantee. I think the board again has that right to ask the government for a guarantee. I do not know whether it will get it, but I am not too sure it is the actual physical cash transfer as much as the fact that the board must want to do it. I think that is where our problem is, on the board's side, not the—

Mrs Grier: The whole question is the board. That comes back, again, to another recommendation of this committee about the whole question of a board being appointed which does not have a direct interest as a lessee in the terminal. Again, there has been no action on that. The minister, in one of his responses to me, pointed out that he had reminded the board members that they must adhere to the intent of Management Board directives with respect to conflict of interest, but we have no acknowledgement from the board that is being followed.

If there were a board there that was clearly an independent board, then they might well say, "Let's debenture this with a guarantee from the government and merely call for tenants who are prepared, in their rent, to cover the cost to us." That, to me, is the sensible way to do it.

Mr Velshi: Essentially, I think what we are looking for is to recommend to the minister that the members on the board should have no conflict with what they are doing there. If we get an independent board, we will probably get more sense out of this whole situation than anything else. I would suggest that be our recommendation and make that a strong recommendation. I would go for that.

The Chairman: I think you still have to have somebody from within the system on the board, who really knows how it all works.

Mr Velshi: Yes, okay. But we did make a suggestion in our last report that the makeup should be slightly different from what it is now. I would still go for that. As long as there is some outside influence. I think this is what Ruth is driving at and I agree with that. I think we need some outside influence to bear on them.

The Chairman: We seem to be at a standstill.

Mrs Grier: Our recommendation 22 would be that the ministry give consideration to appointing members of the board from the public at large. I think we had gone on to talk about a consumer representative as well at one point. I do not know whether the recommendations the committee made with respect to the farmer's market have even been implemented. I do not think there has been very much change there, Mr Dietsch's particular interest and concern.

The Chairman: What we had wanted to do was try to get a recommendation with regard to the expansion of the C units. I am not the professional for wording that type of recommendation, but I think there has to be some recommendation, a very strong recommendation.

We can say what we like. It is up to the ministry, which is going to do

what it likes anyway. However, I do not think that will change. It has done the same thing for years. We could make a recommendation that they could look at the possibility of changing the legislation with regard to expansion.

Miss Roberts: I did not have the opportunity to hear all the witnesses or all the conversations you have had concerning this. Is this something where we could indicate that the commodity groups which use this particular terminal—Do they have any particular input? Should they have any particular further input? Are we recommending something even more far-reaching than just the expansion itself or are we saying maybe they should look at this as an overall change or something like that? I am just asking.

The Chairman: Perpetual leases is where the big problem is.

Mrs Grier: In response to Miss Roberts, we had a lot of discussion during the hearings about the section of legislation that gives this particular facility a monopoly, in effect. One of the recommendations from this committee was that the Ontario Food Terminal Board Act be amended by striking out section 12. Section 12 is the one that says: "This one and this one only."

I certainly developed during our discussions the strong sense that the private market would see another food terminal develop in response to the expansion of the urban area and the need for another terminal if they had the right to do that, but there seemed to be this sense that this was the only terminal, it had to be government-owned and run, so nobody would even consider whether there was room for a second terminal and if so, where it might be built.

Certainly that recommendation, which was also made in the 1978 committee, that the section be struck out, is one I think is very important and still supportable.

Miss Roberts: It addresses the particular concern I just indicated, and that is the reason for your doing that. I was not here for the discussions and that is the reason for your making that recommendation; that is the intention.

1030

Mrs Grier: The Ontario Food Terminal Board said that competing wholesale markets would not be economically viable. The committee said, reading from our report:

"The committee is of the view that section 12...should be repealed, since it serves no useful purpose. At the same time, while the committee has not recommended the privatization of the terminal, it does believe that the Ministry of Agriculture and Food should not rule this out if the right circumstances occur. At the very least the ministry should study this option."

We have had no indication anything has happened at the ministry in response to all of those recommendations.

Mr Velshi: Again, I am not too sure I agree with you there. I am not too sure we were expecting the ministry to implement our recommendations. We are not finished discussing the whole thing ourselves. The ministry does not have any idea what our complete set of recommendations are. I am not too sure we are expecting immediate implementation every time we write a letter to the

ministry. I think our overall report must be presented first so that we ourselves know what we are recommending and not go in isolation one clause at a time and say, "We recommend this," and expect the ministry to take action. Until we ourselves complete our report, I am not too sure I expect any action from the ministry.

Mrs Grier: I thought the report of the standing committee on government agencies that we tabled in the House in June 1988, which contained 26 recommendations, was a final report.

Mr Velshi: But we ourselves are not finished. Obviously, we are going to be giving another report somewhere or something.

Mrs Grier: I thought what we were doing now was sort of following up a year later on what had happened.

The Chairman: Report 14 was where we dealt with the committee recommendations with regard to the food terminal. They are all in here. The ministry has a copy of that report. What we are doing is coming back and trying to deal with the food terminal, the C units and the expansion and what recommendations could take place. That was my understanding. Is that not correct, Mrs Grier?

Mrs Grier: There was also, I think, an undertaking that a year later we would have a look and see whether any of the recommendations had been implemented.

The Chairman: That is right.

Mrs Grier: And we are now finding they have not.

Mr Miller: With regard to the board, in all fairness I think it is trying to come up with some alternatives to meet the requirements of the recommendations. Maybe we are expecting too quick a response in dealing with the overall problem.

Mrs Grier: Except that we were told when the board came before us that it was about to start, that they had the building permit, that they were ready to go on the C units and expansion, that it was something they had always wanted and that yes, they were going to go with it.

Mr Miller: But they put out tenders and that did not work.

Mrs Grier: That did not work.

Mr Miller: No, because no one would accept it on that basis, as I understand it.

Mrs Grier: Yes, the way in which the tender call was formulated. That was when some of the subtenants who had wanted to tender then asked to appear before the committee, and you heard them. They expressed their concern about the tendering process. The board then went back. They then made a proposal back to the board. That has been submitted to the ministry to say, "Here's another way of expanding," and there has been no comment from the ministry, and as yet no determination by the board on whether that new proposal is any more likely to fly than the original one.

Mr J. B. Nixon: I am just puzzling as to how the committee can proceed, given the discussion that has taken place. I am assuming the lengthy number of recommendations that were made in the June 1988 report are recommendations that we will continue to stand by. I am not suggesting we should not. Even though I was not here, I think we should stand by them.

Given that there is dissatisfaction with the efforts so far of the terminal to comply or that we believe it has not fully complied, maybe, in the process, I see us having the opportunity of taking two routes, choosing specific recommendations that we want to reiterate from the June 1988 report and maybe add some that came out of the most recent discussions, or alternatively, saying to the board: "We issued a report in June 1988 with some very serious recommendations as far as we were concerned. We heard you have not been able to comply with these recommendations. We are concerned about that and want you to come back within six months," or whatever appropriate period of time—I do not want to be specific—and make it clear that if they have not complied or cannot give an explanation as to why they have not complied, at that point we are going to be very heavy-handed or very specific.

Those are the two options I can see. That is all.

The Chairman: There are 26 recommendations in the report. It is report 14 of the standing committee on government agencies. It mentions the C units and how the ministry should provide for fixed terms rather than perpetuity leases. All these recommendations are in there and our last recommendation says we want to review it a year from last June to find out what they have done. Perhaps they have been working on it more than we are aware of. I do not know.

The problem is that we have had input from five people who want to get involved in C units and expanding it, and the Ontario Food Terminal Board has not seen fit to proceed. We have made our recommendations and I do not know what further we can do other than to say, "Of the 26 strong recommendations we have made, we have not seen much action on any of them and we hope you would see that there would be some movement in the future." I do not know what else we can do.

Mrs Grier: I like Mr Nixon's idea of perhaps saying we would like a report back from the minister within a certain time as to his understanding of what has happened; for example, our recommendation that the board enter into negotiations with the current leaseholders in order to eliminate perpetuity. The board will say: "Oh, yes, we've done that. We've written to them and asked them if they would consider giving up perpetuity." You know: "Do you want to donate your \$1-million house to me for \$1?" "You have asked me, but I am not necessarily going to do it."

They can say something has happened as a result of the recommendation, but in fact nothing has changed. We need some wording that says we want some concrete indications of what has happened as a result of those recommendations within—I would go to three months. I think that would be an appropriate way to do it, coupled with your strong feeling that nothing much has happened.

The Chairman: Yes. I think that is really what we have to do: write to the ministry or the board and find out what has taken place on the recommendations. Let them get back to us. We have done our job. I do not know what more we can do.

Mr Velshi: I would suggest it be the board. They are the people we want some answers from.

Mr J. B. Nixon: With a copy to the ministry.

The Chairman: Yes. Would that be satisfactory?

Mrs Grier: Who do we make our report to? We report to the Legislature. Is there then any obligation on the minister to follow up on these recommendations, or is it entirely within his purview whether he does it?

I assume that if we write to the minister, the minister will then ask the board what has happened, but seeing that we report to the Legislature, I think it is more appropriate to go that route than for us to go directly to the board. If the minister wants to change the legislation and say, "Do something," the minister can. I understand all the reasons he has not, but I think that is where the ultimate authority lies.

Miss Roberts: It is very clear that the board has been negotiating about C units and things have been done. I think what we should do is write to the board and ask them in three months' time to come forward and indicate. It is not something we should go back to the House with or go to the ministry with. We are dealing directly with the board. I assume this is the committee on government agencies and that we should ask them and send a copy to the minister.

I like the recommendation the chairman made, saying that we have strong feelings and that everything has just been sort of delayed and delayed. If they want to come back and say, "It's because the ministry doesn't do this," or, "It's because Joe Blow doesn't do this," or something, I think that would be appropriate. But I do think that because we are dealing directly with the board, we should ask them to return immediately or within the three months.

Mrs Grier: Why do we not say three months? That would be September and it might well be appropriate to convene again and ask them to arrange to appear before us.

Mr Wiseman: If I can just ask a question, Mr Chairman, I have not been here before but does the minister agree with the recommendations, and if he does, could we not put some—

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The Chairman: We do not know that. It is not our job to find out either. We are dealing with the Ontario Food Terminal Board, which is a board appointed by the Lieutenant Governor with some of the ministry people on it. We are dealing with the board. We are really not dealing with the ministry. Whether he agrees with it or not, I do not know.

Mr Velshi: Well, I agree with Mrs Grier. Let us keep the time frame within the three-month period. That will give them enough time to do what they have to do, without consulting or at least informing us.

The Chairman: Okay. We will have a letter go then.

Mrs Grier: I have one more point, though. I think I accept Miss Roberts's point about our being in the committee on government agencies and dealing with a government agency, but I think you should look at our

recommendations 19, 20, 21 and 22, where all said "the ministry give consideration to," "the ministry should," and "the ministry ought to." I think that if we are going to write to the board about the recommendations that were within its purview, we should at the same time write to the ministry and ask it to report to us what its attitude is to the recommendations that apply to them.

The Chairman: Yes, that makes sense.

Miss Roberts: With respect to the board, if I might, we can call it forward at any time. We do not have to give them two months' notice. They have had the recommendations for a period of time. I suggest we leave that until such time as we have heard from the board, find out what the board is doing and in the meantime we have other things to concern ourselves with. But if we want to bring in someone from the ministry next week and say, "Here are the recommendations," that is not a difficulty. I do not think it is a necessity to write them on anything, with respect. I think the difficulty is that we have to find out what the board has done and if it has responded at all to what we have to say.

The Chairman: But on that, there are about five recommendations. The one Mr Miller touched on, "The Ministry of Agriculture and Food amend the Ontario Food Terminal Board Act by striking out section 12," is one of our recommendations and I think it would be good if we did find out from the ministry if there is any movement on that recommendation.

Miss Roberts: I am sure you will learn that when they arrive.

Mr Miller: People from the ministry I think will be here at any time, if that is your call. They were here the last time we requested them and they will be here when they are needed. Anything you change in the legislation of course has to go to the Legislature and we have not been able to obtain that very well in the last few weeks. It has been hard to make progress.

Mrs Grier: All systems are go now.

Mr Miller: Are we going to be back to work now for a while or are we due to go on summer holidays?

Mrs Grier: It depends what legislation you bring in.

The Chairman: If I could have your attention, perhaps the subcommittee could draft a letter. Would it be appropriate for the committee to accept that the subcommittee draft a letter to be sent to the Ontario Food Terminal Board? We will have the clerk do that. Is that agreeable? Agreed.

If we could move on with the committee, we have until 11 o'clock. Mr Richmond has about 15 minutes and he would like to present the Rental Advisory Housing Committee. It is something we were planning to deal with. Really what we are waiting for is Mr Breaugh with regard to the Ontario French Language Services Commission and that was set for 11 o'clock. I phoned his office yesterday to make sure he was going to be here and I understand Mr Farnan was going to be here at 11 o'clock. So we have 15 minutes. Perhaps we could get the briefing from Mr Richmond on the rent review agency that we could look at.

RENT REGULATION

Mr Richmond: I presume most of you know me. I am Jerry Richmond from legislative research. I happen to be an urban planner by training, but over the nine years I have been here I have been involved in all kinds of committees.

I do not plan to delve into the intricacies of rent review per se. Two or three years ago I did sit with the standing committee on resources development when it did Bill 51 or the Residential Rent Regulation Act. You are probably familiar with the current issue papers we do in legislative research. I have prepared one on rent review, so I will just distribute that as a backgrounder. Does everyone have the background report that was sent to you by the clerk?

Mr J. B. Nixon: I think most of us were concerned that we would be dealing with the Ontario Food Terminal Board and the Ontario French Languages Services Commission. I have mine in my car.

Mr Richmond: Okay. Let me just run through it. I believe Harold can get some Xeroxed or, if not, you do have it in your offices. I will just highlight the report that I have prepared and if you get it before I finish, fine. If not, you can consult it in your offices.

Should you have any questions while I am running through, feel free to ask and I will do my best to answer them, or you can hold them in abeyance until the people from the board appear a few weeks down the road.

The Chairman: It seems you have done an awful lot of work on this, but if we are going to be dealing with the board, really what we want to know is what our role is going to be and how we are going to have a mandate, how we are going to deal with it as a committee, not so much the facts and statistics. We can all read that. But how we are going to handle it in committee and what you feel—

Mr Richmond: I have suggested a number of issues at the back that I will address. What I have to say is not very long. As I say, I am not going to go into the intricacies of rent review per se, but if you have any questions, I can deal with those.

The Rent Review Hearings Board is the appeal body set up under the legislation to handle appeals when rent review decisions are rendered. The board itself was established primarily under section 37 of the Residential Rent Regulation Act, also known as Bill 51.

The rent review process in Ontario, as it currently exists, is really a two-stage or two-phase process. The rent review services branch of the Ministry of Housing initially makes a rent review decision. That is an administrative decision usually on the level of rent increases. There are other things that people can go before rent review for, but most of the business of the rent review system is dealing with landlords wanting rent increases above the guideline.

Once the decision at the administrative level is made, section 101 of the statute provides for an appeal. The appeal body that performs this function is the Rent Review Hearings Board. The board itself was set up in March 1987 with the appointment of the chairperson and chief executive

officer, Dr Ratna Ray, and I believe she will appear when the board itself appears before you.

As of 31 March 1989, the appeal board had 34 members, including a chairman and vice-chairman. The board will be tabling biographical information on the board members. I believe they indicated to me the other day that as of 1 June they have now appointed six additional appeal board members for a total, I guess, of 40.

In terms of the case load, there are tables in my report. The board dealt with some appeals in 1987-88, but it really got going in 1988-89. There are figures in there that indicate it dealt with almost 3,000 appeals in 1988-89. That is reflective of the whole rent review process.

There is also a table where I have included statistics on the number of applications for rent review, the number of cases so-called backlogged, and there is a relation between the two. Roughly, according to the board figures—and I will not explore the intricacies; there is some terminology that they use—out of the rent review decisions made, approximately 20 per cent of those decisions are appealed.

From preliminary indication of the work of the board, in roughly 50 per cent of the cases at the appeal level, the initial decisions at the administrative level are changed. So, from a landlord or tenant point of view, you have a 50 per cent batting average or chance of getting the initial decision changed at the appeal level.

Rent review itself, I do not have to tell you, is fairly controversial. It is in the press all the time: the complexity, administrative cost, time delays, level of increases, what have you. But the appeal function per se has not to date been an issue in the press. That may be reflective of the fact that the appeal function has really just got going in the past year.

If some pattern develops in the pattern of appeals—let's say the appeal board grants more excessive increases or reduces increases—there may be squawking on either side from the viewpoint of tenants or landlords, but it is too early to tell. I certainly did not get any impression of that. In terms of the legislative framework, without going into details, the establishment and powers of the hearings board are set up under the legislation in part IV and part VII.

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There are a few interesting sections. Subsection 43(1) of the statute requires that board members hold their appointments full-time. The intention is that it is not a part-time board; the appointees do not serve on a per diem basis. The intention of the legislation is that they serve on a full-time basis.

Subsection 43(2) stipulates that the hearings board shall develop conflict-of-interest guidelines for board members. I have appended in my report the actual guidelines that the board has developed. They may be the basis of some discussion when we have them before us. I will be commenting on that a bit later.

The legislation is largely self-explanatory; it sets up the board, its functions, the appeal function, and other statutes which impinge on the operation of the board. There is a Statutory Powers Procedure Act. I am not a

lawyer but that governs the principles of natural justice and the operations of the appeal board. Some of you are lawyers. Other statutes that impinge upon them are the Freedom of Information and Protection of Privacy Act, 1987 and the French Language Services Act, 1986. The board has indicated that they adhere to the requirements of those pieces of legislation.

In terms of structure and organization, there is not too much there. The staff level of the board has increased from some 28 at the end of fiscal 1987 to some 132 at the end of fiscal 1989. They have since added six more so they are up around 140 staff. In terms of organization, because rent review is universal across the province, the board has a regional office structure. There is a central office in Toronto, a northern office in Sudbury, a southwestern office in London and an eastern office in Ottawa.

Mr Wiseman: How many staff did they increase by this year?

Mr Richmond: There is a full table. Table 3 gives a complete breakdown. Table 3 in my background report, not in that. You probably have it in your office. We do not have any extras around.

The Chairman: No. They increased to 132.

Mr Richmond: It has gone from 28 in 1986-87, 94 in 1987-88 and 132 on 31 March 1989. They have since appointed six more appeal board members, so there are now 138 members.

Mr Miller: How many appeals are in now? How many are on the waiting list?

Mr Richmond: That is all documented. There is a table 1 in there. For the fiscal year 1987-88, 167 appeals came in. For 1988-89, as of the end of March they had received almost 3,000—2,884. They had heard during 1987-88 26 appeals; during 1988-89 they had dealt with 1,005. When you get back to your shop, if you look at table 1, that is all set down. Part of the increase in staff was really them getting up to speed. They did not really have any appeals to deal with. Table 2 shows you the number of rent review applications. If those got going, you can only appeal once a decision is rendered. The situation is that the rent review statute passed at the end of 1986 and then the administrative process had to get up to speed.

You could not really have an appeal function until decisions were made. Not to be critical, you may have questions about the level of staffing but they had to staff up and they had to set up a regional office structure because rent review is universal across the province. You still might think that their staff is excessive but, going from 28 to 140, they had to set up shop. It is not clear-cut. For someone to claim that it increased 500 per cent, or whatever, five times, I think that would be misleading.

Mr Runciman: But accurate.

Mr Wiseman: We may really get in full swing.

Mr Richmond: You will have the tables back in your office. If you have any questions, give me a shout and I will be glad to help.

Let me just backtrack a bit. You will love this one. I am going to be highlighting their budget.

On the board's budget, there is a table in here that outlines all the dollars and cents, table 4. For sensationalism though, between 1987-88 and 1988-89, total board expenditure went from \$4.24 million to \$8.39 million, an increase of 98 per cent. In 1988-89, the appeal board function accounted for 21 per cent of the total rent review expenditures.

In 1988-89, the administrative cost of the rent review program was just over \$40 million, and operating the appeal function used up \$8.39 million. You can draw whatever conclusions you want from that. There are figures in here on the pay ranges of the chairman and the board members. It is pretty well self-explanatory.

In terms of accountability, the board reports through its chairman to the Minister of Housing in the House. As you are all aware, rent review itself is an administrative responsibility of the Minister of Housing. It is a schedule 1 agency. Under the statute, section 50, the board is audited annually by the Provincial Auditor. You have details, their tables and what have you.

In terms of agency reviews, since it is a fairly new board, the appearance of the hearings board before this committee will really be the first time that this appeal board is subject to scrutiny before a committee of the Legislature. It is its first experience with this.

Some of the issues now—

The Chairman: I am not sure we want to get into too many issues, because we are going to be dealing with this agency. Today, what we are doing is briefing the committee on the procedures and some of the background. We are on the record and I do not want—

Mr Richmond: To tip them off.

The Chairman: That is right. They can get a copy of this, and I am not so sure we want them to know some of what we are doing in the background.

Mr Richmond: Fine. Okay.

The Chairman: The members have the material in their offices. It was not on the agenda, although we knew that you wanted to do it. I think we have allowed you to proceed, and I think we have come to the area where perhaps we should thank you for making the presentation. We will deal with it further when we have them before us, if that would be the agreement of the committee.

Mr Richmond: Quite appropriate. If you should have any questions on this material, do not hesitate to contact me.

Mr Velshi: One question. On table 1 here, you have "\$4 million; review, tenant and other." What does the "other" cover?

Mr Richmond: The "other" category?

Mr Velshi: Yes. What is that?

Mr Richmond: From my general discussions with the board people, there are a number of cases where either landlords or tenants have launched appeals on definitional matters, things like suite hotels.

It is not really pertaining to a rent increase, but it is sort of definitional, from what they have told me. You can explore it with them, but I understand that quite a number of landlords have suite hotels, and the issue is, are they bound by rent review or not? They have launched appeals. There are various other technical matters that have been appealed, sort of a shakeout of the legislation. That is my understanding of what those types of things are.

Mr Velshi: Thank you.

The Chairman: Okay. Thank you very much for attending.

Mr Richmond: Thank you.

The Chairman: As we left it at the last meeting, we have to deal with the Ontario French Language Services Commission. There was a motion that we go in camera, which was carried. At this time we would thank you. We do not need a motion. That has already been dealt with. We will be going in camera.

Mr J. B. Nixon: Shall we take a break now?

The Chairman: Yes. I would suggest five minutes.

The committee continued in camera at 1100.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:
RENT REVIEW HEARINGS BOARD

WEDNESDAY, 14 JUNE 1989



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McNaught, Andrew, Research Officer, Legislative Research Service

Richmond, Jerry M., Research Officer, Legislative Research Service

Also taking part:

Jackson, Cameron (Burlington South PC)

Witnesses:

From the Rent Review Hearings Board:

Ray, Dr Ratna

Burnside, David J., Senior Legal Counsel

Chadha, Parduman, Vice-Chairman and Registrar

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, 14 June 1989

The committee met at 1014 in room 228.

AGENCY REVIEW: RENT REVIEW HEARINGS BOARD

The Chairman: When we adjourned last week, we had indicated that we would have a researcher give us some background with regard to the hearings for about the first 20 minutes or so and then the Rent Review Hearings Board would come in. I think at that time we had indicated that we would probably go into committee of the whole to discuss that in camera. Is that agreeable with the committee? Agreed. We will go into committee of the whole.

The committee continued in camera at 1015.

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The Chairman: Good morning. We want to welcome you to the committee. Have a chair. There is Dr Ray, Mr Chadha and David Burnside. Thank you for coming. I presume that you probably have an opening statement you would like to make. Perhaps you could identify yourself and those with you for the purpose of the record.

Dr Ray: Good morning. I consider it an important event for the Rent Review Hearings Board to have this opportunity of appearing before you. While the hearings board has its own internal self-assessment program, an objective scrutiny by a committee such as yours should help us enormously. It will help us, I believe, to further refine that self-initiated activity. Therefore, I consider this committee's time and advice and any recommendations that you may wish to make an exercise that is very positive. Thank you again for inviting us before you.

Please allow me to introduce two of my colleagues. On my right is the vice-chairman of the hearings board, P. P. "Gulu" Chadha. Mr Chadha has 13 years of experience in the rent review program. I do not think I would have survived even the 19 months without him.

On my left is David Burnside, senior legal counsel of the Rent Review Hearings Board. He brings to the board more than seven years of experience of the rent review program. Quite apart from that, he is known to be a very skillful, astute and humane lawyer.

At the request of the committee's research staff, my colleagues have provided, I believe, ample information. At the end of the statement we will be at your disposal to answer any questions you may wish to ask.

As you know, the hearings board was established through the enactment of the Residential Rent Regulation Act, 1986. A long history of rent review, spanning 11 years, preceded the passage of this act. Perhaps as a result of the former rent review programs and many changes before this act came into effect, there remains, both in the perception of the general public and among those concerned about rent review, some confusion about the current program and its identity.

For example, the Rent Review Hearings Board is frequently referred to as the rent review commission, the rent review committee, the residential commission and the rent review appeal board. On the other side, the rent review services branch of the Ministry of Housing is described as the rent review board as well as the rent review commission. Clearly, as one of my former employers, the late Honourable John Robarts, the former Premier of Ontario, used to say, there is need to "shovel the fog in the back forties."

Most people still believe that the carriage of the rent review program rests with one organization only. For the general public, rent review is rent review, rent control and rent review. What is a rose by any other name? It does not matter who does what, as long as the cases are handled within a reasonable time period and the decisions satisfy the customers. But as you know very well, life is not that simple, nor is it meant to be.

The program as it currently stands is based on two stages. First, applications from landlords and tenants come to the rent review services branch of the Ministry of Housing. Orders are made by rent review administrators, who are civil servants. When tenants and landlords are not satisfied or have some disagreement, for whatever reason, they can appeal to the Rent Review Hearings Board. This is a separate and distinct process. Why then, you may wonder, is there a continuing confusion about who does what, when and how.

This may be the result of many factors, most important perhaps the newness of the current program, which has not yet carved out its focal identity. As well, the vestiges of a long history of rent review remain.

An idea of the rent review program which took shape in the mid-1970s, as a result of the inflationary pressures all across Canada then, went through many architects' hands, many blueprints and many revisions before it culminated in the current law. The Residential Rent Regulation Act, 1986 would not be here today without the blessings of lawmakers, the Legislature of Ontario.

A few words on the appeal process: The act requires appeals to be filed within 30 days of the order that was given with supporting documents that were not already filed at the initial application with the rent review services branch of the Ministry of Housing. There is no charge for appealing to the board. Once the board receives the appeals, the rent review services branch of the Ministry of Housing sends over all the files and documents it has. The issues on appeal are limited to those that were raised at the time of the initial application to the Ministry of Housing. On the other hand, if the parties agree in writing, the issues could be limited.

You may think that, according to the previous program, the burden of proof and appeal rests with the person who appeals. In this program, the burden of proof for appeal rests with the person who originally applied for either the rent increase or the rent decrease. While the act allows one member to hear the appeal, there are requests for three-member panels and the act allows that. Upwards of 27 to 30 per cent of all our hearings are heard by three-member panels.

The board may initiate prehearing conferences or parties may request prehearing conferences. We have held somewhere around 58 prehearing conferences since the very beginning. Prehearing conferences are used to focus what the issues will be, how many people will be attending the hearing and perhaps explain the procedures of the appeal board.

At the hearing of the appeal, we are bound by the Statutory Powers Procedure Act. Although our hearings are not court-like, there has to be some order and some rules of natural justice applied to the hearing itself to ensure that parties are equally accorded a full opportunity to exercise their procedural rights. Naturally, the style and approach to the hearing differs when we have 300 tenants appealing or 300 tenants present, as opposed to two parties facing each other.

At the end of the hearing, the board may decide to vary or affirm the original decision of the rent review administrator, depending on its own findings of fact and conclusions. On the other hand, if the board feels that the original decision was not correct, the board can substitute an order for its own.

You have received ample material about the board's organization, staff and members. You know the board is fairly decentralized. We have four regional offices, one in Sudbury, one in London, one in Ottawa and one in Toronto. The regions are in line with the geographical regions sketched out in the legislation.

We have three members in the northern regional office, five in London, six in Ottawa and 24 in Toronto. The vice-chairman and chairman are in the head office. Board members are responsible for carrying out full and impartial hearings and writing factual, well-considered, impartial orders. They operate out of these four regional offices.

Staff in these offices are supervised by a manager with the responsibility of ensuring a satisfactory provision of all the research and technical analysis that is needed by the members and helping the public when called upon to do so.

The board's head office is like any other head office; it gives general program support, helps train members and staff, helps with the budget and personal issues and provides legal advice and technical analysis as required.

As with most boards and agencies in Ontario, members of my board are appointed through order in council. All members are first appointed for one year and are generally renewed for a three-year term. As you know, the chairman is the chief executive officer and she is a member as well. The legislation specifies the expression "chairman," therefore, I am bound by that expression, although I know that I am a woman.

The vice-chairman is a member as well, but a civil servant. He is responsible for all administrative affairs. In the absence of the chairman, or the inability of the chairman, the vice-chairman may act as the chairman under the terms of the act.

Earlier I mentioned that in 19 short months we have achieved certain results. Let me spend a few minutes on those results. Results, whether quantitative or qualitative, cannot be measured without having a set of clear goals and objectives, and a sense of the type of skills, abilities and people needed to produce results.

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The Rent Review Hearing Board's mandate is to act as an independent, quasi-judicial tribunal to adjudicate appeals concerning rent.

Let me spend some time on the quality of the people we have on the board who serve the public. As you have seen from the biographical sketches, the members bring an impressive sum of talents, skills, experience and backgrounds. The staff who serve the public are the same way: talented, skilled and generally extremely committed to the program.

At the outset of this program, I made a conscious decision to help build an organization that could stand the most demanding of tests. Time will tell whether this organization has the capacity to do so. That meant bringing together the most appropriate blend of skills, backgrounds and abilities, people who ranged the whole spectrum, from the very technically trained specialists to generalists with broad backgrounds and experiences. It was also very important to me to draw from and build on the strengths available from two sources, from the former rent review experience, and fresh ideas and energy instilled by a diversity of new individuals who joined the board.

In my opinion, without that balanced blend of caution, prudent experience, creative energy and enthusiasm, our new organization would suffer from the lack of dynamism sorely needed to survive, let alone do well, in an environment that is ever so slightly charged and sonorous.

I was fortunate enough to be able to find members and staff who made a transition to the new program. This was a deliberate decision on my part, and looking back to year one, 1987-88, the decision seems to have been the right one.

Having served on the Pepin-Robarts Task Force on Canadian Unity, I was acutely aware of the need, in a new organization that brings appointees and public servants together, for a process of jointly shaping a new program.

Therefore, from the very outset, we set up committees and work groups that brought appointees and civil servants together and to a consensual understanding of the legislation and development programs. The influence of working together and the process itself, rather than imposition of authority, will produce the desired results, if not immediately, over time.

Staff and members, interdependent on each other for their respective successes, cannot possibly work well together without having shared experiences in problem-solving. This investment of time and energy and perseverance is, I believe, paying off. The preliminary results indicate that.

While year one, fiscal year 1987-88, did not result in many hearings and orders, in retrospect it was a blessing in disguise. This meant much needed time and effort went to setting up shop and becoming functional; more important, spending enough time to train members and staff.

The act outlines the mandate of the board, but the fulfilment of that mandate would require clearly thought through goals and timetables. At the outset, I realized the hearings board was born in an environment that begged for expeditious processing of appeals and decision-making. At the same time, the board had to reconcile two interests: first, the interests of tenants and

landlords in releasing quick, straightforward decisions; and second, tempering speed with the dictates of natural justice.

The hearings board had to come to grips with the success and results attained by the former rent review programs. The board had to be mindful of the process that led to the creation of this new act and the new organization. Failure to do so and to anticipate what might lie ahead would lead to the premature demise of the chairman, and along with her, the board.

Sensing this palpable prospect, the board set clear goals and a preliminary process that would produce the desired results. The results we aimed for are appeals processed and orders released within a reasonable time frame; orders and reasons written in clear and simple language; guidelines and procedures developed and made available to the public; members and staff trained and equipped to deal effectively with the case flow, parties and the public; printed and other information from the board available throughout Ontario; meeting the requirements of the French Language Services Act long before its coming into force, as well as being in the vanguard of providing services in other languages widely spoken in Ontario.

At this point, the question naturally would come to your mind: "Well, it is very well and good to set esoteric goals and objects. What concrete results have you achieved? How well are you serving the tenants and landlords and at what cost?"

These questions are very much on my mind. I am able to report to you that yes, within 19 months, since the board held its first hearing, the board has achieved many of these objectives.

From the end of 1987 and some way through 1988, the board held public hearing meetings and public information meetings all across Ontario and made available a number of its brochures to the public.

Nineteen eighty-eight generated a much larger case flow for the hearings board. The board was able to put together its formal procedures manual and guidelines to the public and made available rules of procedures for the conduct of appeal hearings.

Since its inception, the board has received 3,347 appeals from tenants and landlords who appear to have some dispute with the orders made by the rent review administrators. From our figures, the rate of appeal to the board works out to be roughly 20 per cent. Out of these 3,347 appeals, 1,681 have been heard, 1,137 have been scheduled and 404 remain to be scheduled very soon. In approximately 50 per cent of the cases, the board has set aside the administrators' orders.

On average, a case to us is heard within three to four months from filing and the order, again on average, is released within one to two months from the hearing. In total then, it usually takes three to six months for the disposition of an appeal to the board. There are of course exceptions and we are monitoring those cases very carefully.

You may want to know what it costs to provide the board's services. Our budget in 1987-88 was \$6.8 million but we spent \$4.2 million. In 1988-89, the budget, based on the projected rate of appeals, was \$13.4 million and we have spent \$8.4 million. You may have precise questions later about the board's budget and expenditures.

A few words on employment equity, which is the goal of this province: If I am not mistaken, I believe that my board is the only agency in Ontario that reflects most fully the population of this province. Of 40 members, 14 are Canadians of different linguistic and cultural background. Nineteen are women. Included in this group are Canadians of Jamaican, Caribbean, Chinese, Italian, Greek, East Indian, Polish, Hungarian, Slovak, Australian and other groups. Among staff, we have 54 women and 30 minorities. This, again, represents the Chinese, Portuguese, Japanese, Italian, East Indian, Guyanian and Philippines and groups of similar descent. Several of our middle management, professional and supervisory positions are held by women as well as minorities.

What about French-language services? Again, I am in a full position to say that my board is capable of providing services in French to the public. In addition, we have published brochures in seven other languages spoken widely in Ontario and we have linguistic skills on the board, as I have mentioned, to hold hearings in other languages as well.

Does my presentation to you mean there are no problems facing the board? Is there no room for improvement? To claim that would be like living in a fool's paradise.

1100

In its short life, the board has received, now and then, a few complaints, but a few kudos as well by outsiders who have observed our hearings and who have read our orders and reasons. This does not mean we can be complacent and stop from striving towards continued visible and measurable improvements in several areas.

I am personally committed too, and bring to this job my previous professional record that stands on passionately caring about serving the public well, and caring equally for the wellbeing of the people within our organization. On both fronts, I intend to remain steadily and actively engaged.

In fact, on my list of areas that require gently persuasive but persistent monitoring are efficiency and effectiveness in the processing of appeals; quality of our hearings and orders; expeditiousness of hearings and orders; efficiency and reliability of our information retrieval system; public access to our services; the reach and effectiveness of our public information program.

Underlying all these areas, of course, are respect for the rights of tenants and landlords, as provided in the legislation, and professionalism and care in the use of public funds. Achievement of these improvements are equally important to my colleagues and me. On the way, we may run into some quicksand and quagmires. Nevertheless, before moving on to other interests, I want to ensure that this board is one of the best in Ontario.

It is a daunting challenge that will be pursued with creative enthusiasm, and the advice and support of my eminently knowledgeable and suitably experienced colleagues.

Mr Chairman, honourable members of this committee, these then are my general remarks. We are now at your disposal for questions. My two advisers will join me in responding to questions that call for their specialized expertise.

The Chairman: Thank you very much for your excellent presentation. We will now turn to the committee for questions. Mr Nixon.

Mr J. B. Nixon: Dr Ray, I think it would be helpful for the committee if you would outline briefly the process for dealing with an appeal and what matters can and cannot be raised in an appeal.

Dr Ray: The appeals are filed with the 21 offices of rent review services across Ontario, for the communities across this province. Tenants and landlords have access to all forms and all material in all the 21 offices of the rent review services branch. They can also file appeals with our four board offices and sometimes we receive appeals in the head office as well.

As I said earlier, the issues that were raised at the initial application can be raised again when the appeal comes to us. On the other hand, if parties agree in writing, then the issues could be limited. Let me give you some examples.

More often than not, members find it is necessary to ask questions at the hearing so as to ensure that parties understand what the process is, and if they have forgotten to raise certain issues that are relevant and that could be extremely important for the consideration of the appeal and the findings of the appeal, they will ask those questions.

David, do you want to answer any more?

Mr Burnside: I am David Burnside, for the record. As a general answer to the question, we are dealing in our area with rent review and that is the aspect of landlord and tenant relations we deal with. We do not have jurisdiction over landlord and tenant matters, which are still under part IV of the Landlord and Tenant Act and are handled by a district court judge. I think that may assist in partially answering the question on a jurisdictional basis.

Mr Jackson: Just a quick supplementary on the area of appeals that Mr Nixon has raised, when I took an award to appeal, we applied for an extension. This is some months ago. First, I was granted a verbal one and then later was advised that a specific hearing would have to be conducted to determine if an extension could be granted.

Has that procedure been tidied up somewhat? I think it was Mr Rosebrugh who had to come all the way down from London just for a half-hour meeting to determine, and then subsequently rule that we could get an extension. Perhaps that is an area that might be tidied up.

My second question is, are you in any way monitoring the time it is taking for appeals, that is, the numbers that are coming in the door and how long it is taking for hearings and/or final awards.

Dr Ray: On the first question—my colleagues may jump in at any time—as you may know, Mr Jackson, the legislation is structured in such a way that even the granting or denial of the extension of time touches on the substantive consideration of the appeal. It has an impact on the procedural rights, the natural rights, of the parties. Therefore, it is incumbent on a member to make the determination.

If we wanted to, we could delegate that responsibility to the administrative staff, but the combination of our legislation and the Statutory

Powers Procedure Act obliges us to send in, even for that half-hour—and I know the case—a member to make that determination. Occasionally, I am called upon to make that determination blindly on the basis of the papers that are on file. I think I would be reluctant to do that more often than not, because by that decision I will take away the opportunity of both parties to be able to address that issue.

Mr Burnside: I think that is the critical point I would emphasize. It is something that a party is asking for. People who may not want the extension of time granted should have an opportunity to have their say. We have issued a guideline 4 bearing the date of November 1988 that touches on extension of time and indicates it could be dealt with as a preliminary matter at appeal. There have been many instances where extensions of time have been granted by the board member or panel. There are also instances where it has been denied, which is an indication that it is an arguable issue.

Dr Ray: On the second question of monitoring the hearing time, yes, we are extremely concerned and we are monitoring each file carefully. In the first few months when appeals did not come, that was a different situation. After 1987, between March and May, all of a sudden the rate of appeal went up astronomically, so it meant certain adjustments. It takes about 90 days between the time the appeal comes in until the hearing has been scheduled. We are extremely concerned, as I pointed out in my statement, and we are closely monitoring that situation.

Mr Breaugh: Dr Ray, I want to start by commending the board for doing a number of things that I think are worth noting in terms of representation of the population at large, presentation of documents, gathering up resourceful people who can offer something to the process that perhaps has been lacking previously, and in terms of being prepared to do things in the French language. I think the board deserves all kinds of kudos and commendations.

The only real problem I have is that in terms of its basic premise of providing a rent review process, it stinks. I do not think that is particularly your fault. I am interested in pursuing for a little bit what you might be doing as a board to identify those areas in the legislation or the process that are causing the problems. I find it very difficult to defend a process where the minister announces what the rate should be for the year, and then you have to try to explain to someone that the landlord asked for nine per cent and got 11 per cent, that the average of the hearings remains around the 11 per cent to 12 per cent mark.

1110

The point I am interested in pursuing with you this morning is that the perception of the public is not the one I have as someone who writes a law and then expects an agency to kind of enforce that law. Their perception comes from a different basis. They are confused by this process. I would be interested in knowing what you are doing to try to overcome that.

They are confused when they call the local offices and no one there knows what the forms should look like or does not have the form or cannot explain when the hearing will be held. There is a great deal of confusion—and I do not think you would deny that—in the general public on how this process works, on whether you are going to court or to some quasi-judicial body, whether you need a lawyer or do not need a lawyer.

Basically, how can the public, whether you are a landlord, most notably a small landlord, or a tenant, be expected to function in the middle of this process? I would like you to take a moment or two and just explain, because these are not new problems to you, how you are monitoring these trouble spots, how you are identifying them for the ministry and what you have in the way of a formal process to make recommendations to change the areas that are really causing the problem.

Dr Ray: First of all, the board's mandate is to administer those provisions which apply to the appeals. The responsibility for any changes to the legislation or regulations is beyond the purview of the board.

Mr Breaugh: Could I just stop you? Are you saying that you are basically disregarding that, that that is not your jurisdiction and so you are not doing anything in that regard?

Dr Ray: We cannot be responsible for—

Mr Breaugh: I know you cannot change it. I am asking you, are you doing anything to identify those areas which need to be changed and forwarding that information to the ministry?

Dr Ray: As the case flow increases, we are monitoring and we will be monitoring very carefully those areas which are causing difficulties to the board. In that context, I know about the confusion, as I mentioned earlier.

We have done two things so far, and they are by no means comprehensive yet. First of all, in the first year, we had four regional meetings with landlords' and tenants' groups and we invited representatives whose names we got through the people in the community and the rent review services branch.

We followed that with 11 meetings across this province, from small centres to large centres, and went ourselves to meet with groups and individuals again. We supplemented that with the presentation of a video about the board's process and explained through our printed material what the board does and what the board cannot do.

We have a very ambitious plan for the next few months, starting in the fall. We intend to go to some particular cities, such as Windsor, Hamilton, Burlington and Sudbury, time and again, to create what we might call satellite offices for one evening or two. We will invite individuals from the communities, as you described, those who are not as informed and cannot become as informed because they do not have the resources.

We want to make our offices and services available. Our colleagues will go. If I am invited, I will go. Our staff from the regional offices will attend. That is what is in the plan.

We are also monitoring whether or not our forms, our procedures, our printed materials are indeed in stock in those 21 offices of the rent review services branch, and our colleagues in communications co-ordination will go and follow up in each one of those offices. The vice-chairman, Mr Chadha, meets with the rent review services branch regularly to ensure, if there are difficulties in communication, explaining to the public what more we could or we should do.

Mr Chadha: Continuing that, whenever an appeal is received, we send a copy of that notice to the local office of the rent review services.

Similarly, when a hearing is scheduled, we send a copy of the notice of hearing to the field office so that if there are any inquiries from the public, the office will be in a position to provide that essential information. If there is any more information required which that office obviously is not in a position to provide, then the public or the party would be referred to our local office which would be willing to provide all the assistance that is required.

Mr Breaugh: I would like to pursue this for a moment. I would like to make it as clear as I can that I am not arguing with you about a rent review law which I think is a bad law, and I do not expect that you are going to change that law. That is not your job. It is not your responsibility, but you are positioned to identify those parts of the law which are causing the difficulty in the process and to report to this committee or to the government as a whole on where the big problems are occurring.

I very much encourage you to do that because you are really the only people who are in a position to identify, to monitor and to make such recommendations. I know it is not in your mandate, but I would make a pitch to you that it needs to be done. I think you know that it needs to be done. In spite of the fact that you are not in place to recommend changes in law, I would ask you to find a way somehow in your annual report to make note of these things and to make this information available because I think it is extremely important that we do so.

There is a second area that I would like to pursue with you a bit. I guess the best way to put it is this: This seems to be a law and a process where if you have the resources, you can function under it. If you are a large landlord and you have on-staff accountants, lawyers and representatives of various kinds to gather up the information that this process demands and to make those presentations, you can function. If you are a tenant group and you can somehow gather together under your own steam resources of the same nature, you can go before this process and argue the case as it is laid out in this law.

The difficulty, of course, is that that leaves two major components in the system that are at a distinct disadvantage. One is the smaller landlord who does not have a lawyer, who may not even have an accountant, who does not keep track of papers in the way that a large corporation does, who probably owns the building as a pension plan and works making cars or runs a small business on the side.

Those smaller landlords are being expected to do something that—they report to me on a regular basis—they are having great difficulty doing. Even regarding simple things such as knowing when the hearing is going to be held, they have great difficulty getting an answer as to when that might be. It is incredibly important to them because for a lot of them, they have to get a day off work to go to an appeal of this nature, or they have to bring somebody in to run the corner store that is their livelihood. It becomes critical to them, and they cannot say: "Well, we will schedule that next October 1." They have to find out whether they can get that day off work to do that.

There are two groups that I think are having difficulty with this law and with this process. One is specifically the smaller landlord who does not have those resources and the other is the tenant who happens to live in a community that does not have an active tenants' organization.

I know there are efforts under way to strengthen that and that the ministry is supportive of the notion of a province-wide tenants' association, but in many of our communities those people who—let me just speak from my personal experience. I cannot tell you the number of times I have gone into the south end of Oshawa to try to organize a tenants' organization. We all work like hell for six months and at the end of six months they have all moved and we start the process again. It is cyclical in nature. People go and live there for a shorter period of time rather than a longer one. By the time you have your organization elected and have developed some expertise, half of your troop has moved somewhere else.

So there are some clearly identifiable groups that are struggling with this process and having great difficulty. Maybe it is because there are operations under the Statutory Powers Procedure Act here. Maybe it is the nature of the process that we set up, which is very similar to another one that works and that is the Ontario Labour Relations Board, where there are panels and hearings and people decide expertise and equal representation.

But I would be interested in your comments finally on this matter. It looks to me like we are headed in one direction, where we are going to have to admit that both parties need to have legal representation to participate in this process and we are going to have to charge up the Ombudsman or somebody else and do to this process what we did to the Workers' Compensation Board process, and that is provide advisers of some kind to come in and help them sort it out. Otherwise, we are going to have to scrap this process in large measure and go to a much simpler one. I would be interested in what you have to say about those things.

1120

Dr Ray: First, let me address the question of trying to assist small landlords and tenants. My board would be very prepared and very pleased to go to any community—in fact Oshawa—as many times as you wish, to hold meetings in order to facilitate the learning or preparedness about the appeal process itself. That is first and definite. There is no moving; it is immutable.

Second, our staff in four regional offices are very well trained. When the appeals come to us, if the staff receive calls, they are prepared to sit down with the individual parties, especially, forgive me, moms and pops who come to us, to sit down with them and take them by the hand through the appeal process.

Yes, it is intimidating. I am intimidated by the process. I am reasonably well informed, but that is the process itself, whether we like it or not. There has been a tradition of hearing at both levels in the rent review program. People come to us with an expectation of having two sets of hearings and they feel they will be able to speak their minds and bare their hearts at both of these hearings.

One hearing has been lost in the process. So when they come finally to the appeal board, there is pent-up energy and some amount of fear. I am afraid of a number of demanding provisions of the legislation myself, but that is life.

What we do is take the parties through these individual cases and ask them, "Have you prepared this document which may be necessary for your

appeal?" If there is a linguistic problem, we try to find someone who has that capacity.

At the hearing itself, while members are not obliged and they cannot really investigate or take an inquisitory role into the adjudicative process, they try to explain in such a way—at least I do, when I do hearings—that it can be understood by a layperson. After all, I am a simple mortal and I want these eminent colleagues of mine to explain, in simple words, what that concept is. Tell me again. I am basically a housewife. I need it to be explained in proper layperson's terms. Although we work on both fronts, we still have to have that kind of help.

In the same way, in the future when we go to these public hearings and public meetings, we are also trying to bring our legal counsel and our technical analysts, to be able to simplify these concepts for general consumption. We are looking at all our printed material, which for my taste, given the literacy level in this province and in this country, is still slightly beyond the comprehension of the general public. You are absolutely right. We have to do much more work on that.

On the notice of hearings, I think Mr Chadha would like to explain to you how the hearing is scheduled and when the notice is given.

Mr Chadha: When we started the program, we thought we would try to consult with the parties. Then we found it would not be possible to consult with each and every party, particularly where the number of units was very large. We went in for a selective kind of consultation: wherever we knew that some agents or organized associations were there, we started the consultation process.

We ran into some difficulty and we found that too much time was being spent on that end. Things were getting delayed. We told the party and the public that we would not be consulting, we would be doing the scheduling without any prior consultation, but we would ensure that at least 30 days' notice was given to the parties before the hearing. That was not well received and we received a lot complaints from both. That was one issue in which both tenants and landlords agreed that we should be doing prior consultation.

We invited input from various people and also had meetings with the representatives of landlords as well as the representatives of tenants. With them, we agreed that we would go back and try to consult the parties before scheduling the hearing. That is the process which we have now put in place. But there again, we are trying to consult more where the parties are organized and some agents are appointed and we are aware of that.

We have not gone to the extent that we would consult with each and every party, but if there is any problem, we could consider an extension of that policy to everybody, even if two or three parties are involved, which is not possible with the large building. There we have to consult only if there is an organized person to represent the parties.

Dr Ray: One more word. We could perhaps consider posting the notices of hearing in all the 21 offices when the hearing has been scheduled, even in those communities where we have offices of the interview services branch. That might be helpful. Perhaps it might require some negotiation between us and those offices, but would you like to give it a try?

Mr Chadha: We are presently sending a copy of the notice of hearing and posting it.

Dr Ray: On the question of assistance to the public, in the absence of intervenor funding in our legislation, I am not sure what else we could do, but we will try every possible way to assist the parties to know about and prepare better for the hearing. We would be most interested in any recommendations that you would care to make.

Mr Breaugh: I want to commend you for your initiative in trying to explain this act, the regulations that are attendant with it and the process to the general public. If you accomplish this, you can take on world peace just after this. I think this act is inexplicable to the world at large. I think the attendant regulations would boggle the mind of the most demented lawyer I ever met. I think the process itself is just inexplicable.

Let me conclude with one area where I really am concerned and I know that you are as well. The upshot of this process has been for many tenants in many parts of Ontario that some of them have waited for two and three years finally to get a decision. That is not your fault and let me get that on the record. But from their point of view this is what happened. For the last couple of years they have not known when the decision would be reached or what the decision would be. Those decisions are beginning now to emerge out of the system. Many of them are now being expected to pay up in some cases \$2,000, \$3,000 and \$4,000 all at once.

The legislation really does not deal with that matter. It assumed somehow, I suppose, that a landlord who may not be the landlord who initiated this a couple of years ago is going to run around Ontario and try to find a tenant who is now supposed to get a rebate of \$2,000 or \$3,000. I wait with great anticipation to find the landlord who is going to do that but I have not seen it happen yet.

What I have seen happen is that when the decision went the other way and the tenants were expected to pay, the landlord who is currently owner of that building is there. So are those tenants. They are calling my office and saying: "How am I expected to pay now \$3,000 or \$4,000 to this landlord? I am on a fixed income. My pension cheque went up 4.7 per cent last year. I have not got that kind of money nor can I get that kind of money in the foreseeable future." For them, the end result has been a kind of economic eviction process.

The rent review process finally has rendered a decision, and I want to set aside any concerns I might have about that. My chief concern right now is some little old lady on a pension cheque who has been handed a bill for \$4,000 and cannot pay it. Everybody involved in this process knows she cannot pay it. You know it, the landlord knows it and she sure as hell knows it.

The best that I have heard to date is that on several occasions the landlord recognizes the obvious: "This women cannot pay this money now. This man has not got that kind of cash. So I either throw them out on the street"—which some landlords do not want to do—"or I make some arrangement over the next six or 10 months or over the next year or two to take additional amounts of their pension money for housing."

1130

I would like to know a little bit about your perspective on this matter. I cannot believe you would not look at these decisions and understand the

economic ramifications of them, know what is happening to people. It is not your fault. The process is not your fault, but you are aware of these decisions now being reached and you are aware of the dramatic impact they are having on tenants—not all over Ontario yet, but it is getting there. I would like to hear what you have to say on that.

Dr Ray: To say that I am not concerned, that I do not think about these issues every day would be an understatement of the year. For most of my professional life in Canada I have been a social activist in the domain of equality of languages, in the realm of constitutional distribution of powers or in equality between the sexes.

I find myself in the role of an adjudicator. That I have to make drastic adjustments to my personality, to my approach to problem-solving could also be taken as an understatement of the year. As much as I think of these issues and worry about the legislation, perhaps so demanding, I am faced with the stark reality: I am an adjudicator, my members are adjudicators and they are aware of the legislative provisions and the regulations. They must confine themselves to the provisions as they exist in the legislation and the regulations. They must be mindful of the facts which are presented at the hearing about the cases by both parties. Each case is based on the facts and the merits and justice of the case.

Yes, there are times, even at the end of the appeal process, when there will be—and it is undeniable; we cannot deny that; it would be presumptuous; it would be misleading you—rent increases which are higher. There are cases, though, where we have reduced the rent increases on the basis of the quality of maintenance, the quality of standards of the buildings. I have, time and time again, brought to the attention of all members that it is their responsibility to be aware of the intention of the legislation, the construction of the legislation, the framework and the provisions of the legislation as they look at each and every case. They cannot be swayed. Albeit in most instances their heart may tug, they have to work with their head. They are obliged to follow the legislation and the regulations as they exist. I know it is not a satisfactory answer. I wish I could do better.

Mr Breaugh: Just in conclusion, I want to thank you for being so honest with us, because I think that is one thing that is sometimes missing from this process. I concur that it is not your job to change this act or to rewrite these regulations or to do a whole lot of other things, but when we forget about what our heart tells us to do, when we see something that is clearly wrong and we walk away from it or we ignore it or we do not at least mention it, then our head is as wrong as our heart could ever be. I do not think you are that kind of person and I do not think you will do that.

As legislators, we make all kinds of mistakes. The only problem with our mistakes is that they write the damned things down and then everybody carries them out as law. When we screw up, we ought to have the brains and the integrity to admit that, and when you see that we have made a mistake, we would really appreciate it if—you do not have to fly flags or bring in the armed forces—just write a little note that says, "You did something a little bit wrong here," and if we have any brains and any heart, we will do our best to correct that. We would appreciate your help in doing that.

The Chairman: I have four more members who would like to ask questions.

Miss Roberts: We all have a half-hour apiece? Are we going to do this again?

The Chairman: Yes, we will be here next week.

Miss Roberts: I do not want to take too much time if we are not going to be doing it.

The Chairman: We will be here next week.

Miss Roberts: Thank you. Thank you very much for the information and for your concerns. I want to talk about process, because I understand very clearly what your position is as an adjudicator, and those people who are appointed, but I would like to know a bit more about process and how it works between the local rent review people and yourselves on a fairly technical basis, because the concerns that Mr Breaugh has brought forward are concerns that we all have and that happen in everybody's town area and are points that are brought to our attention on a constant basis.

The first question I would like to deal with is, what is your relationship to the local office of the rent review?

Dr Ray: I would like to call on the vice-chairman, Mr Chadha.

Mr Chadha: Personally, notice of appeal is filed as—

Miss Roberts: I want to know your relationship. Are you in control? What is your relationship with it?

Mr Chadha: The two organizations are functioning independently of each other and we are trying to ensure not only that we are independent but also that we are perceived to be independent of each other.

Miss Roberts: Therefore—and I might just as well ask you the questions; it might be a lot easier than just a comment from you—on any application that is made to the services branch, until there is an order, you do not touch it?

Mr Chadha: That is right.

Miss Roberts: Once that order is made, who has control of that file?

Mr Chadha: Once a notice of appeal is filed—as indicated earlier by my chairman, the notice could be filed anywhere: in the local office or in our regional office or in our head office—as soon as we get a copy of the notice of appeal, we immediately write to the local office of the rent review services, saying that a notice of appeal has been filed on such-and-such application, "Please send us all the documents which are relevant to this particular order."

Once they receive the notice, then they immediately transfer to us a copy of the order. They should bring down a copy of the application, all the documentation filed by both parties and any other relevant information relating to the file.

Miss Roberts: Do they also give you information as to how they came to their process, as to what they did and what investigations they may have made? Is it a complete file? There is a difference between copies of documents and a complete file.

Mr Chadha: Their practice differs somewhat from office to office.

There is some information which they are obliged to forward in terms of the legislation. In addition to that, some of the offices do send us complete files—everything. Some of the offices do not send complete files, and from time to time we discuss with them and we say that this is at least the information we would definitely want in addition to that basic information provided for in the legislation. Most offices are sending this information to us, but what was the rationale of logic in accepting a particular figure as against another one? Probably that we may not be able to—

Miss Roberts: So you do not have a complete file, you just have certain documentation. I would expect that the people who work with the services branch would go through a certain process to reach whatever their decision was. You do not have reasons for their decisions put down and available, and any background.

Mr Chadha: Because they do not issue any reasons.

Miss Roberts: No, I am not asking whether they issue them or not. That would be in their file. Are you given their complete file?

Mr Chadha: That is what I said. In some cases we get complete files; in other cases we do not.

1140

Miss Roberts: Why do not you ask for the complete file each time? A problem I hear about is that once they go through the services branch they come to you and it is the same thing over and over again. It is a duplication of effort, it is a waste of time. So I am just asking, would that be a helpful thing for you or not?

Dr Ray: There is another dimension to it, because we have original jurisdiction. Adjudicators need not be influenced by the worksheets and the rationale or the reasons which have gone—

Miss Roberts: I am a lawyer; I understand that very clearly. I understand all those things, but we are dealing with a process to deal with people. This is not basically a court of law, although it is similar. It is not necessarily a court of equity either, which you have made extremely clear in your discussion today. What I am concerned about is a possibility. If we are going to make a recommendation, my concern—and my concern was maybe brought forward by Mr Jackson and other members—is to compress the time, to make sure that we make this a streamlined system. They may not agree with everything that happens but they disagree six months earlier.

Mr Chadha: I think it is a very good proposal and a feasible one. We have been discussing that with the rent review side and I am sure a recommendation like that would be helpful.

Miss Roberts: I am sorry that my questions are technical, but I am just sort of trying to compress time. Do you have sittings—and this might be one way of addressing the problem Mr Breaugh had—whereby you say, "The rent review board will sit for these three weeks and you'll be heard in those three weeks"? You can tell them two months ahead of time: "You'll be heard. We don't know exactly the date, but you'll be in those three weeks and we'll advise you, etc." Do you have sittings or do you just, when you have enough cases, say, "Okay, we'll go ahead and hear them"?

Mr Chadha: It is the latter. We do not have sittings like that, but once we have enough cases we schedule those cases and try to give as much advance notice to the parties as possible. We are giving at least 30 days' notice.

Miss Roberts: Have you thought about having sittings? I know you have time limits involved, but if you had the sittings it might force people to think about it and deal with that, and it might help you out. That is just a suggestion as well.

The other thing that is happening are preconferences. I see that you do have that ability. I notice it is a "may"; do you make that mandatory? Do you suggest that very strongly?

Dr Ray: We have held 58 pre-hearing conferences since 1987. In many instances the board has initiated the pre-hearing conferences. In some instances the parties have asked for pre-hearing conferences. Yet it is somewhat of a handicap or disability for us, because it does not allow the board or the parties to come to a kind of determination in that process. It is just the exchange of parts, ideas and information and clarification of issues, more of an educational process. I could not say honestly that the pre-hearing conferences have assisted in compressing or prolonging the time.

Miss Roberts: In the court system they are using them for the purposes of compressing time and perhaps you could look at that for compressing time, because you have problems of conflict of interest. If you have a member at the preconference or whatever you call it—a pre-hearing—you have problems with that. I am thinking of making sure that people are aware of what the issues are, delimiting those issues so that when you do go on to the hearing you have five or six issues you can look at.

Mr Burnside: Actually, the statute itself protects against the member who holds a pre-hearing conference from being involved in the hearing itself, which is quite correct. As far as the advantages that can be had with pre-hearing conferences are concerned, there have been instances where we found them to be very helpful and assist the parties in understanding the process. At the same time, because they do not lend themselves to a mediation-type atmosphere and because—

Miss Roberts: Why not? Is that not the purpose of it?

Mr Burnside: The purpose is spelled out in the statute itself. It is fairly delineated as to what could be discussed and it appears to involve preliminary determination issues as opposed to strictly mediation. There was a provision in the previous legislation that clearly called for mediation as part of a process before a hearing on all matters except for whole-building review. That was specifically omitted from this type of provision.

Maybe it is something that could be considered as far as assisting the process because certainly one of the advantages in pre-trial setups is to try and resolve a number of matters before they actually come to a hearing process. Sometimes we find that, because final decisions cannot be made and we are not able to make great leaps as far as resolving matters, we end up discussing matters that are discussed again at the hearing process itself. We have looked at that section carefully.

Mr J. B. Nixon: I understood you to say that there was a mediation provision in the previous legislation. If there were to be a mediation

provision in this legislation, could you accomplish that mediation function with the existing staff level and budget you have?

Mr Burnside: That is more of a budgetary question on which legal counsel could offer its opinion, but administration may have a different view so perhaps I could pass it to Mr Chadha.

Dr Ray: Mr Chairman, with your indulgence, what would be your advice, Mr Burnside?

Mr Burnside: My advice? I think it could be handled with our current complement. I think there could be a lot gained and it would save a lot of time down the line.

Mr Jackson: I have a supplementary on that. I am familiar with all three sets of legislation on this thing. Part of the mediation works when you put it in the context of the time in which it occurs and the fact that prior to a consultation meeting there has never been an occasion for the tenant and landlord to sit down. Under the old legislation there was an upfront hearing—Dr. Ray made reference to two occasions to meet—whereas it is only at appeals that you actually get into a room with that adjudicator, independent referee, whomever.

So, the question of where mediation would be helpful is also tied into the issue of when you come together in the process. That was part of what disturbed me when we eliminated that, albeit for very good reasons. It was sold on the basis of more time efficiency and not bogging down with nonsubstantive issues. The actual experience, which is Mr Breaugh's point, has led us to realize that that was too ambitious and too hopeful an objective for this type of legislation, given its complexity. I want that point put on the record, that it was tied to the fact that there is never an occasion for the parties to come together.

The Chairman: And your supplementary?

Mr Jackson: That was a supplementary statement.

The Chairman: Have you anything further, Miss Roberts?

Mr Jackson: Do you not agree?

Dr Ray: That depends, Mr Jackson. I am sorry.

Mr Chadha: I will just respond to that question about staffing. During the last two years, 1987-88 and 1988-89, our actual expenditure was about 38 per cent less than our budget because we did not have the backlog. Even for 1989-90 our printed estimates are about \$13.9 million but actually Management Board has put in place a holdback because we would not have the workload to warrant that kind of funding. If we have to go in for a mediation process, yes, we would require additional staff over what we have got, but we would be able to do that within our printed estimates and capital funding.

Miss Roberts: I have been thinking of something else, particularly with what Mr Jackson said about having to wait for someone to come down to his area from London and having to deal with that. Do you have the ability to telephone conference, so that you could have an adjudicator and you could have the two sides cities apart? Do you have that function and ability in your area?

1150

Dr Ray: I know from the press that, in order to deal with their astronomical backlog, the Immigration and Refugee Board was told in a court decision that it might be able to do teleconferencing.

Miss Roberts: They do them now in appeals all over.

Dr Ray: I do not see why we could not do that if we were able to find both parties together to be able to speak to the issues.

Miss Roberts: I understand what you are saying, but I can assure you that someone in Mr Jackson's position and someone who is on the other side on a day's notice would make himself available for a 15-minute or half-hour telephone conference, in comparison to waiting for three to five weeks for someone to come.

In the shortening of the process I think it is money that is involved and you would have to make available the conferencing situation. That might be very helpful because you have a large area of the north to deal with, just an unbelievable area, and very few people to do that. I do not know exactly how you are set up.

Dr Ray: I think the previous program had done teleconferencing.

Mr Chadha: We tried to but we did not do it. I think since then the technology has significantly advanced. Recently we attended a conference of the Canadian Council of Administrative Tribunals. Somebody had come from the Supreme Court to give a talk and showed a video. My understanding is that even in Supreme Court now they have tried this kind of thing. So it is something worth exploring.

Miss Roberts: In a sentence, can you say what you think your mandate is? Not just what is written in the legislation, Dr Ray.

Mr J. B. Nixon: In one sentence?

Miss Roberts: In a very brief way. My concern is that we are serving a function for the landlords and tenants of Ontario to allow them to put forward their concerns to an independent tribunal for a decision. I am not so sure if that is exactly what it is and I would like a little bit more elaboration on that. I do not have Mr Jackson's background of years of knowledge in this particular legislation.

Dr Ray: Our mandate is to hear appeals from both tenants and landlords as they come to us, within a reasonable time period as far as is possible, and to look at the facts within the context of the issues raised at the time of the application. If necessary, the Rent Review Hearings Board members, one member or three members, can broaden those issues in order to make sure that the merits and justice of the case have been considered.

Miss Roberts: I noted that indeed the board members could call for their own evidence and make their own inquiries. Have you set out rules—I think it is the Statutory Powers Procedure Act that you might have to follow—and on what basis do you do that, other than natural justice?

Mr Jackson: Strictly the regulations.

Miss Roberts: On what basis do you decide to broaden the issue? Are

there two issues brought before you, but you as a board realize that there are three others that they have not addressed and you cannot make an order that makes sense until they have been addressed?

Dr Ray: First of all, David will supplement. Having received the file, the member or members of the panel would review it very carefully and regardless of the issues raised, they may have certain inklings that between the lines lies something else. Behind the numbers there is something else to be explored. So even though the tenants, and in most instances small tenants' groups and small landlords, may not be able to recognize what may be there, the board members have the ability and they have been trained and encouraged to broaden the issues when that is necessary.

Miss Roberts: I have other questions too but I know we are getting near to noon.

The Chairman: I have a few that I would like to ask and you may have to get the information back for another week. At the end of 1989 you had 132 on staff. How many do you have on staff today?

Mr Chadha: We have that information. Maybe I will go right back to the beginning. At the end of March 1987 we had 19 board members and nine support staff; at the end of March 1988 we had 24 members and 70 support staff; at the end of March 1989 we had 34 members and 98 support staff, and currently, we have 40 board members and 101 support staff.

The Chairman: Thank you. The other question I have is, of the 21 areas across the province, do you hear appeals in those regional areas?

Dr Ray: I am pleased to be able to say my advisers tell me that we go to communities that even the Residential Tenancy Commission never went to. So we go out and send our members to hear appeals anywhere the appeals may originate. That goes beyond the 21 offices the rent review services have.

The Chairman: Perhaps you could get back to me next week with the areas they have been held in.

Dr Ray: Sure.

The Chairman: I am curious to know, of the four areas that you have, what number of appeals you get and what percentage of appeals are heard within 90 days? What appeals take 120 days and what number of appeals would be outstanding within a year? Those are some of the statistics I would like to see.

Mr Chadha: We could collect statistics. At the moment, I can only give you averages. On average, we are completing our hearings within four months and we are issuing our orders within about 60 to 70 days, but those are averages. Again, there are some appeals which are taking much longer. There are others which are taking less time.

Before coming here, in preparing for this committee, I asked myself and my staff to give me a list of the five oldest appeals which are still there, which are not being fully heard. I got that information and there are some which were received in 1988, almost a year or 10 months ago, and which for one reason or another, not due to the fault of the board but due to various circumstances, have still not been heard.

There would be only a very few appeals which are delayed to that extent.

Most of them we try to hear within four months, but we could give you more analysis of that.

Mr Jackson: On your request for information, when I asked the question earlier, I asked specifically for the amount of time when the appeal is heard from the time there is a decision. That is the statistic that concerns me as well, and I hope there was a clear understanding that we could obtain that.

I have my case, the Barkley Towers case, which you are familiar with. There are over 200 pages in my appeal. That was done last fall and we are still waiting for the announcement on that.

Dr Ray: Without getting into the details of that case, I do remember there was a difficulty with that hearing and the panel, as requested, stepped down. A new panel was sent to hear that case and, if I am not mistaken, that order has been released.

Mr Jackson: We will deal with that. I wanted to ask that we get statistics with respect to when the decision is given to the tenants and the landlord. That was my point.

Mr J. B. Nixon: I have a supplementary to one of your questions, Mr. Chairman. Dr Ray, you outlined the rapid growth in the size of the staff complement and the number of members on the panel. It is my understanding from the researcher's report that is due to the fact that the board has just been starting up over approximately the last year and a half. Do you anticipate the same growth or stabilization?

Dr Ray: I anticipate a stabilization because I personally do not like a very large organization. Within each one of us, there remains at least a 20 per cent to 25 per cent untapped potential. We all work below our capacity. Recently we had to add six new members, as you know from your research staff's report, to bring it to 40, to assist us in training them, making them prepared for the fall when we believe, from the projection of the initial level, there will be more cases coming to us. I want to keep the growth stabilized, to answer your question.

The Chairman: I have a follow-up question. In regard to the 21 area offices of housing, I want the statistics on the ones that are held in those offices, plus indicating the others that are not there. Can you indicate to me also the amount of staff that you have and the area that they cover? I presume you have staff from northern Ontario who cover northern Ontario. Do you have staff from Metro Toronto who go to northern Ontario to fill in, or is it done with your staff there?

Dr Ray: I am not sure if you are making a distinction between the staff as civil servants, as opposed to members who are appointees?

The Chairman: Pardon me. I meant the board members.

Dr Ray: We have three in the north to cover that vast region; five in the southwestern region--the office is in London; six in our eastern office which in Ottawa; 24 in our central region, by far the largest region in Toronto, and the two of us. I do a few hearings just to make sure to monitor what goes on at hearings and get a feel for it.

The Chairman: Thank you. I understand you will be able to come back next Wednesday morning?

Dr Ray: If you wish, Mr Chairman.

The Chairman: Yes, we do and we will continue at that time. If the committee agrees, we will adjourn now until next Wednesday morning. Thank you very much.

The committee adjourned at 1200.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:
RENT REVIEW HEARINGS BOARD

WEDNESDAY 21 JUNE 1989



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Chadha, Parduman, Vice-Chairman and Registrar

Burnside, David J., Senior Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 21 June 1989

The committee met at 1023 in room 228.

AGENCY REVIEW: RENT REVIEW HEARINGS BOARD
(continued)

The Chairman: This is the standing committee on government agencies, reviewing the Rent Review Hearings Board. Once again, we have back with us Dr Ray, Mr Chadha and Mr Burnside. Welcome back. I wonder if you have any opening statement that you want to make today with regard to some of the questioning that took place last week.

Dr Ray: Not at this time, but you requested some numbers from us, and we have those. If you so please, we can have them circulated. There are four sets of numbers you requested.

The first document is hearings held by the board, being locations other than the board's own offices. We have four offices, as we mentioned earlier.

The second document is hearings held by members in their own regions, as opposed to members drawn from other regions to hold hearings.

The third document speaks to the time it takes between the hearing, on average, and the release of the order.

The last set of numbers shows, to some extent, the scheduling of the appeal from receiving the notice-of-appeal form and the file from the rent review services to the actual hearing. In between, there may be adjournments, pre-hearing conferences and a number of other activities which take place.

If you wish, I will call on the vice-chairman, Mr Chadha, to take the committee through some of these numbers.

Mr Chadha: The first statement basically indicates the communities where our board members went to hold hearings, other than places where our regional offices are situated. If you look at that, on the first page, which talks about the central region, about 151 hearings were held within our own hearing zones which related to the hearings within the immediate commuting area of Metropolitan Toronto. In addition to that, there is a large list of places where our members went and held hearings, which included even places like Mississauga, Oshawa, Pickering, Richmond Hill and Bramalea.

Basically, the board's policy is that within Metropolitan Toronto we would prefer to hold hearings within our own hearing rooms. Outside the Metro office, we would go and have some place rented out where we could have the hearings. Within Metro Toronto, if there are any special requests as to why a particular hearing should not be held in our hearing room but in some other facility, those requests are always considered.

The second page deals with similar information relating to our northern and eastern regions. In the northern region, as you can see, out of the 40 hearings, only eight were held within our own hearing rooms at Sudbury; for 32, we went out to various communities.

On the right side is the eastern region, which again shows that out of 77 hearings, 43 were held in Ottawa, where our own hearing rooms are situated, and for the rest, we went to various communities.

The last page shows our southwestern region, which is London and other areas. There the number of hearings which we held outside our offices is much higher. Out of 199, only 27 were within our own office and all the rest were in various communities.

The Chairman: The 31 that you held in Hamilton, would you have had them at the municipal offices?

Mr Chadha: Most of them, I think. In the beginning, we also had another hearing room. Some of them were in municipal offices. If municipal offices are not available, then whatever is the alternative.

Dr Ray: We sometimes go to libraries, community halls, whatever is available and at the most reasonable cost.

Before leaving this set of numbers, it might be interesting for legal counsel to take us through the regions as they are enunciated in our regulations. Would that be helpful?

The Chairman: Perhaps for some members it would be. Please proceed.

1030

Mr Burnside: Just very briefly, the regions for the Rent Review Hearings Board are set out in Ontario regulation 4/87. The central region is comprised of the municipality of Metropolitan Toronto, York, Peel, the town of Oakville and Durham, as well as the county of Simcoe.

The southwest region contains the counties of Essex, Kent, Elgin, Lambton, Middlesex and Oxford, the regional municipality of Haldimand-Norfolk, the county of Brant, the regional municipality of Niagara, the regional municipality of Hamilton-Wentworth and Halton, excluding the town of Oakville which was part of the central region, the county of Wellington, the regional municipality of Waterloo and the counties of Perth, Huron, Bruce, Grey and Dufferin.

The eastern region is comprised of the counties of Victoria, Peterborough, Northumberland, Hastings, Lennox and Addington, Frontenac, Leeds, Grenville, Stormont, Dundas, Glengarry, Prescott and Russell, the regional municipality of Ottawa-Carleton and the counties of Lanark, Renfrew, Prince Edward and Haliburton.

Finally, the northern region is comprised of the territorial districts of Rainy River, Kenora, Thunder Bay, Cochrane, Algoma, Sudbury, Timiskiming, Nipissing, Parry Sound, Manitoulin and the district municipality of Muskoka.

The Chairman: I have one question on your document 2 with regard to the Rent Review Hearings Board. "For the purpose of this analysis, hearings held by a three-member panel have been counted as three hearings." If it was one hearing, why would you count it as three hearings just because three people sat on the board?

Mr Chadha: That was basically for this kind of analysis, because what we are trying to analyse here is in how many cases members located within

a region held their hearings within that region and in how many cases they went out. Now, it may so happen that in a panel of three persons there may be three members from three different regions or there may be two members from one region and one member from another region. So to give a correct picture we had to treat it as three hearings, in terms of the number of members who were at the hearings.

The Chairman: Well, you are not quite getting through to me. When you have one hearing and it takes three people to sit on the board to hear that one review, I still do not understand why you would classify it as three hearings because there are three different people from different areas.

Mr Chadha: Okay, the concern was if there was, let's say, one hearing with three persons and the three members are from three different regions. If we do not do that in this analysis, it will be difficult to decide where to show that, whether that hearing was held by a member within, say, the central region or another region. So for this analysis we will show that yes, one was held by a member of that region and the other two were held by members of the other region.

Mr Burnside: It would be basically the same if we were to divide it in thirds and show on one particular hearing with a panel of three, if one member came from the central region and two from the southwest, that one third would be central and two thirds southwest. In order to avoid fractions we just counted every member on an appearance basis.

Miss Roberts: I understand what we asked you for was to see what members were doing, not what the hearings were about, so I understand that concept. My question is, looking at this, are you saying that in the southwest—and I think the first page of document 2 was what the chairman was referring to—because you only had, I believe, four members, was it not, for the beginning—

Dr Ray: At the time only four members.

Miss Roberts: So if you had a three-member panel you always had to haul in a large percentage, maybe two—

Dr Ray: Yes.

Mr Chadha: Frequently.

Miss Roberts: I noticed you did a lot of travelling around in the southwest on that basis. Now, you have added, I believe, one more member.

Dr Ray: Just recently.

Miss Roberts: If that is right, if that is my understanding of your documentation, that percentage will improve so you do not have to bring somebody in. It should improve that percentage so you would have all three from the area, if there were three—

Dr Ray: It may and it may not. The quandary here is for most of our hearings requests for three-member panels are getting higher rather than lower. The other aspect or dimension that comes into play when I assign the members is the experience needed, the skills needed. It takes anywhere, depending on the member's capacity, depending on the time the member has come in, from one year to one and a half years to really become fully conversant

with the legislation and to feel, "I can deal with the numbers now, thank God."

So if there is a very complicated hearing on the file in the southwest or northern region, and you have received a flavour of the vastness of the northern region, then I have no option but to say: "Hey, would you mind taking these all? Would you like to sit with the other member and show him how the hearing is done or show him how it was treated in the past?"

Miss Roberts: My understanding is that you appoint them for one year and then, if they wish, for up to a three-year term.

Dr Ray: Depending on the performance, yes.

Miss Roberts: In the next year of operation you will have a better handle, and as a result even of that, this percentage will be a better percentage.

Dr Ray: That is right.

Miss Roberts: Mr Chairman, if I am off on this and not on the same line or issue, please advise me if it is incorrect at this time. How many people do you need as backup people or assistants for each new board member you put on?

Dr Ray: We have not begun to track that, although we will, because in the resource requirement we need to show the distribution of support personnel for each member. Having said that, I am trying to take the board towards a point where some members will be able to do—in fact, some are doing—all their preparation for the files themselves, and then do the hearing and the calculations. They will first draft up the order and give it to someone, almost ready to be printed and mailed out.

If I may have five minutes, Mr Chairman, I could explain how that process would work. I am not a mathematician or a mathematical genius or something. I really do not like numbers, if I may say that among family. However, one learns a number of things in life and one continues to learn. When I began to do my hearings, I needed all kinds of hand-holding: "Mr. Chadha, will you make sure my file is all right? Mr. Burnside, would you tell me if I am doing right with the legal provisions?" Now I do not need that, and as the chair of the board I should not. I really should not.

The members are coming to that point, too. For section 95, the rebate, otherwise known as the rebate applications or rebate appeals, not much work is needed. Computers we have invested in—

Miss Roberts: That was my next question, so please go ahead.

Dr Ray: Sorry, I do not want to be presumptuous.

Miss Roberts: Go ahead. Please do. It is much easier to hear it from you.

Dr Ray: The computers we have invested in should come in very handy on two fronts: They help draft the orders, and members are devoting time to learning the word processing part of it; and they calculate the rents and the rent increases or decreases through what we or the ministry calls the "computer-assisted rent determination program." Mr Chadha, you wanted to add something?

Mr Chadha: Yes, I just wanted to say, in addition to what Dr Ray has said, that on average we can say we have two support persons for each panel. One of them would be basically what we call the appeal assistant who does the preliminary analysis and prepares the file. The other would consist of the clerk--steno and do other clerical jobs and the issuing of notices and typing and whatever else is involved. That would give you some sort of overall view.

Miss Roberts: That is basically it. My memory is so inaccurate: What is it, 46 members?

Dr Ray: Forty now.

Miss Roberts: Forty; it has gone from 34 to 40.

Dr Ray: Yes.

Miss Roberts: That means you need about 80 staff to support them, and the rest of the staff in your complement is to help in the general overall direction.

Dr Ray: Advisory and policy functions.

Miss Roberts: Thank you. Those are the questions I had on that document.

The Chairman: At what percentage rate is your case load coming down, with the extra staff you have now and the extra hearings you are holding?

1040

Dr Ray: The rate of appeal is still steady at 20 per cent. Given the projection from the rent review services, the administrative wing from which we get cases after their orders, the projection still seems to be that 2,200 cases might be resolved, or appeals might be received by the board for which 2,100 hearings might have to be held. My projection or my aim is to have all members reach that optimum functional stage—I hate to use those terms—where they should all be able to do eight complicated hearings a month.

The Chairman: How many hearings were on the books as of 1 January and how many are on the books as of today, approximately?

Mr Chadha: We keep our statistics on a fiscal year basis, so I will give you the figures as of the end of March rather than as of 1 January. At the end of March 1988, we had 141 appeals outstanding with us. At the end of March 1989, we had 1,945 appeals outstanding. Currently, as of the latest report, 9 June, we had 1,541 appeals outstanding.

This number, on the face of it, seems to be very large, but about 1,000 appeals relate to suite hotels. The number of hearings which are required for those 1,000 is only about 20 or so. They have all been scheduled and preliminary hearings have been held on all of these, but the parties and their counsels wanted more time and more adjournments, so probably it will not be before the end of 1989 that we are really through with those hearings.

Dr Ray: Mr Chairman, 28 hearings have been scheduled to handle those suite hotels; 27 exist right now because one was withdrawn recently. Mr Chadha, perhaps you can give a little more detail on the hearings that have been scheduled now.

Mr Chadha: The total?

Dr Ray: Yes, and which are on the docket to be scheduled within the next few weeks.

Mr Chadha: As I said, out of 1,541 appeals which are outstanding, 1,137 have already been scheduled for various dates, and 404 are still to be scheduled. They are again at various stages. Some of them are recent appeals for which we are still awaiting the receipt of material from the rent review offices. After we receive the material, we have a preliminary review in our regional offices. After that review, they send back the files to us at the head office and then we schedule those hearings.

The Chairman: Of those 1137, what is the age of those appeals?

Mr Chadha: I do not have the age of those readily available. I have the age of those which we have still not scheduled.

The Chairman: It would be over six months, I presume?

Mr Chadha: Not all of them. Some of them will be less than six months. We have another statement which talks about the age of the hearings we have already scheduled on a larger basis, and that will give you some idea about the time taken.

Miss Roberts: That was my question. Are these 1,137 scheduled within the next three months? I am looking at your timing.

Mr Chadha: Yes. Out of those, 261 are scheduled for this month, June; 154 are in July; and the rest, 752, which include a lot of suite hotels, are for the following months.

Miss Roberts: So basically, the 404 that are still to be scheduled will be scheduled, I would assume, starting in September?

Mr Chadha: August.

Miss Roberts: August. That is about a two-month wait.

If we can go on to document 3—

The Chairman: I would just like to get this clear. You are talking about 200 a month, roughly.

Mr Chadha: There are 150 to 200 a month.

The Chairman: At that rate, it will be December before you clean up the ones that are here, less than 1,541. In the meantime, you are going to have a lot more coming in. Those 1,500 that are already in could have been in for three months or four months, and they may not be heard until December.

Mr Chadha: As I mentioned, a large number of those 1,500, about 1,000 appeals, relate to suite hotels. They are going to be handled at about 20 hearings. Although the numbers appear to be very large, they will be resolved by the end of this year; in between, in addition to that, we will be in a position to hold about 150 hearings a month.

Dr Ray: Those are considered to be a horse of a different colour, if I might say it that way.

The Chairman: Like a palomino.

Dr Ray: The complexity there is that they are mainly concentrated in the Metropolitan Toronto area. It so happens that two or three legal firms and accounting firms are handling those cases for the applicants or appellants, and we have to accommodate their timetable. It has been extremely difficult to push them any harder than we have, and bring forward the timetable. All of them want five, six days. Looking at the file, I do not think it will take that long, but initially they all want five or six days to be scheduled to discuss those hearings. They have been scheduled for September and October.

Mr Miller: Is that five or six days for each case?

Dr Ray: Yes.

Mr Chadha: To clarify it further, the 1,541 appeals which are outstanding will be dealt with at 584 hearings. If we want to look at how long it will take, if we do 150 to 200 hearings a month, then that 584 number would be more than enough.

Mr Velshi: Just a question on this. Is the delay you are facing with the suite hotel hearings deliberate on the part of those people, or what do you suspect is happening? Is it because they are genuinely busy?

Dr Ray: I could not impute or attribute any motives to that.

Mr Burnside: The indication appears to be that they feel they are going to need anywhere from four to six days to present evidence and argument. Initially, we have to take their estimate of the time and afford them that amount of time. When we experience these hearings, we will be much wiser as to whether four to six days would be necessary, but I think initially we do not want to schedule, say, two days and then find out we need longer and then we will have to adjourn them for a month or two. I think it may be better and more expeditious to deal with them as one unit at a time, but it is a unique determination concerning jurisdiction that has created a large number of appeals this year for the board. Once we have dealt with them, then that ballooning effect of this type of application will not recur.

Our experience in this is a new experience. We are learning as we go along. Perhaps a year from now we will have the advantage of knowing how much they really took and how much resources were really necessary, but I do not think at this point, as it is such a new concept and a new determination, that anybody is really delaying or in any way hesitating. I am not sure whether there is any advantage in that. I just think they want to make sure they have enough time to fully and fairly present their case, and we have to give them that consideration.

1050

Mr Velshi: One tends to imagine that there is an advantage to a delay there, because there is no question of a payback if there are no tenants there as such. They are only of a temporary nature in a suite hotel.

Mr Burnside: Subsection 4(2) of our act requires that a landlord who claims to have a suite hotel has to actually get an order from either the minister or the board on appeal which would recognize it as a suite hotel. Until they get that order, they are considered to be subject to residential rent review and would be subject to rent rebate applications, for instance, if

tenants or occupants of those complexes wish to enforce their rights.

Mr Velshi: Where would that rent rebate go? Who would it be paid to a year from now? Those tenants would not be around a year from now if the landlords are asked to pay that back.

Mr Burnside: As far as the jurisdiction on a determination of a suite hotel is concerned, it is made under subsection 13(3), which is a jurisdictional determination. If the board determines it is not a suite hotel, we would dismiss the application and it would be basically up to the occupants or tenants to enforce their rights.

Mr Faubert: I thought from your opening remarks that you are increasing your efficiency of disposition of appeals, yet the figures given by Mr Chadha are that as of the end of June, there are 1,941 outstanding appeals, of which 1,000 relate to the suite hotel issue. That leaves 941 they expect to be disposed of in the next six months, but that is still on target with last year, which is about 978 appeals in a six-month period. So the expectation is that you are not going to be dealing with more. I would just like you to comment on this.

Mr Chadha: Last year, that is, 1988-89, we heard only 1,000 appeals in the entire year, and this year we are expecting to hear at least 2,000 appeals.

Mr Faubert: You have 978 in the six-month period?

Mr Chadha: That is right. In the year, we will be holding at least 2,000 appeals, compared to 1,000 last year, so the rate of our disposal of the appeals will be at least twice as much.

Mr Faubert: Your efficiency of this year versus last year, as opposed to the next six months versus the first six months.

Mr Chadha: Yes.

Mr Faubert: Do you expect that efficiency to increase?

Dr Ray: Definitely.

Mr Chadha: Somewhat.

Dr Ray: One thing I pointed out in my opening statement is that there are six areas of improvement. Internally, our members and staff know very well that there is no room for slacking off, no room for extraordinary mistakes and there is no room for not having a very careful monitoring system that shows the results within the time frame.

The first year was really our setting up shop and getting members ready to deal with cases. There were a number of adjournments which had to take place because, first, parties were not fully prepared to deal with hearings. Second, parties were not really informed of what might be happening at a hearing. Some members were quite uncomfortable in dealing with adversarial relationships at a hearing and how to manage a hearing in order to elicit the information, get the vast amount of information, come back home and synthesize and put the order together. They have gone miles ahead now and the level of comfort is much better now.

Then, in addition, to that, the computers are going to help with the systems. Mr Chadha, as the registrar of the whole scheduling system, will be very tough on all of us if we slack off. Yes, we intend to see great improvement in that.

The Chairman: Are you finished, Mr Faubert?

Mr Faubert: Yes.

The Chairman: I am just curious. I get calls from people whose landlord has applied for a rent increase and the people sometimes do not know what to do. I do not know whether it is that you are not informing the public or whether they are not concerned until it happens to them. Who has forms for those tenants other than your district offices? Does every MPP's office have forms that the people could pick up there? I know mine does not and I was curious if others do. Where could those individuals get forms other than at the four regional offices?

Dr Ray: There are two stages of application, if I understand that correctly. If the landlord wishes to apply for increases higher than the guideline, in the first instance he or she will go to the Ministry of Housing rent review services' 21 offices. That is the first instance.

If he or she is dissatisfied or just does not like the order for whatever reason, then he or she appeals to the board. The board's forms and paperwork are all available in the four regional offices. In addition—Mr Chadha, correct me if I am wrong—all is available in the 21 offices of the Ministry of Housing. It would be most helpful if we were to be able to make all the paperwork readily available through the constituency offices of the MPPs. It would be enormously helpful.

Miss Roberts: May I just have a supplementary? Are your forms available through the housing authorities?

Dr Ray: I do not believe so.

Miss Roberts: I do not believe they are. I think the two areas are the only two areas. If we are going to consider something on this, Mr Chairman, and I think your question and comment are very important, I believe we should consider municipal offices. If you are a landlord or a tenant, where do you turn? The Ministry of Housing or a rent review office is not necessarily the first place you would turn. They will turn to their municipal office or they will turn to their housing authority, even though they are not in assisted housing, but they know it has something to do with housing.

In my particular case, although we are very close to London, many of the people will not go there, and it will take three weeks to get the form out and back and a few things. So if that is a possibility—

Dr Ray: Yes, indeed. It will be enormously helpful. Also, as I mentioned in the public education—public information program, we will welcome, indeed we yearn for any assistance you can give us or any guidance you can give us. Whenever you, the members of this committee or others, recognize or are aware of any problems, I would like to know.

The Chairman: Just to follow up on that, if you did have a map of municipal offices, there would have to be some direction there, in case that person wanted some information, to refer them to one of your 21 offices. There

is no point in them picking up a form and filling out something they are not really sure of. I think they pretty well have to talk to somebody who is aware of what they can do and what they should not do. There is no doubt that if you go to pick up a form, you will have a question or two for the person you are picking up the form from. I do not think the municipal people will want that responsibility or want to answer any questions.

Miss Roberts: No, but it is in an area that is paid for by the taxpayers of Ontario on a municipal level, and these people are dealing with housing. You cannot have the expertise in that area, but you could at least say, "Here you can pick up the document." You have excellent pamphlets that say, "Phone this, this and this" and these are the questions.

Mr Chairman, if I might, going on from there: When you talk to tenants' organizations, do you give information and copies of forms to them as well?

Dr Ray: Yes, indeed.

Miss Roberts: There are many organizations out there that have concerns about housing that can be—

The Chairman: We all have rent review pamphlets in our constituency offices.

Miss Roberts: But not the forms.

The Chairman: That is right.

Dr Ray: In addition, one other idea we are exploring now—in fact, we will institute that program in the fall—is to hold satellite offices in certain areas. For example, in response to Mr Breaugh's comment the other day, I mentioned that perhaps we will go to Oshawa and spend two evenings, invite tenants and landlords, and just explain what the process is all about. In addition, for instance, in the Hamilton municipal offices we can have two or three staff on such and such a day: "Come and pick up the form and let us try to help you in any way possible." We could do that.

The Chairman: Okay. Any other questions?

Miss Roberts: Can we go on to some of the other documents that have been presented?

The Chairman: Yes.

Miss Roberts: Because I think they were your questions, Mr Chairman, at the end of the last meeting.

1100

Document 3 is the time taken between the completion of the hearing and the issuing of the order. I have looked at them and it would appear that it usually takes 60 days or less to get out close to 50 per cent, 60 per cent; its 53 per cent cumulatively. So the rest of them are involved, I see, after the three months, four months.

I note that there is a significant number in the eastern that are six months or more. I assume your counsel would like to answer this. I assume that is because of some particular important legal point that has had to be argued.

Mr Burnside: It is hard to identify precisely the reasons for delay. It could be that there are technical legal problems involved. It could be that there is a panel of three which involves detailed discussions and agreement on certain issues. There are certain applications which involve a number of cross claims which are very complex in dealing with financial and economic loss.

Mr Chadha: In addition, what happens is that frequently at the hearings, while arguments are made, some of the documents are not there and the board members give direction for certain other documentation to be filed to substantiate what was indicated at the hearing. If that is done, then 30 days may be allowed for the party to file the documents, and another 15 or 30 days may be allowed for the other parties to respond. Although the hearing has been completed, the members cannot really start working on the order unless that information is there. That also accounts for some of the cases where there are more than six months.

Dr Ray: In addition to that, all these orders are being tracked. I meet with members every two and a half months, especially the new members, each quarter, and we go over certain orders which are pending in their docket and the complexity. Then we have target dates for each one of them. Some of these are going at the end of June, some will be in the middle of July. So there is an extremely tight tracking system, and we will not let go.

Miss Roberts: That is good news, because if we are going to receive any complaints, it is about the time involved.

If I might go on to document 4?

The Chairman: Yes. That is the last one.

Miss Roberts: This is your question that you put forward, Mr Chairman, from the receipt of the appeal to the hearing. If you look at those, it would appear that 46 per cent, from receipt to completion of hearing—I am looking at the bottom line. Almost half, not quite, are 121 to 180 days. I figure that to be about six months. Then, if I look back at document 3, after that the average is another two months. So the concern Mr Faubert had—he is not here right now—is that means on the average it takes eight months.

Dr Ray: No, not really.

Mr Chadha: Six months.

Miss Roberts: But that is not what your figures say to me. What you have said in document 4—I just want to be sure I understand—is that this is from the date of receipt to the completion of the hearing. Document 3 is the time taken from completion of the hearing to the issuing of the order, and on the average, that is two months, from completion to issuing the order. On the average, from receipt of application to completion of hearing is six months. So between six to eight months is the common length of time, if I am reading your documents right.

Mr Chadha: I will just explain that further. Document 4 gives two kinds of information. The first column is from receipt to the first hearing date. A large number of hearings would be completed on the first date itself, then there would be several in which other sittings will be required or adjournments will be requested. The two statistics you can see are the first one, where in 43 per cent of cases we hold the hearing within less than 120 days. That would be the total of 16 per cent and 27 per cent. In 97 per cent

of cases, we hold the first hearing within less than 180 days. When you take the adjournments and other delays into account, and that is the line you are referring to, in 22 per cent of cases only it is less than 120 days and in 68 per cent it is less than 180 days.

If we talk about averages, for 1988-89 our average number of days from receipt to completion of hearing was 115 days and the average for completion of hearing to the order issued was 52 days. The average would be about six months. As you know, averages mean there will be a lot of them over six months and a lot of them will be less than six months.

Miss Roberts: I think that is some of the major concern: how to cut that down. What we are interested in is helping you cut that down.

The Chairman: Would I be correct in saying that approximately 77 per cent are held between six months and a year?

Mr Chadha: Are you talking about the issuing, right from the—

The Chairman: I am talking about from the first receipt of the application to the completion of the hearing: 77 per cent would take place between six months and a year?

Mr Chadha: Sixty-eight per cent would be within 180 days. If you look at the last line, which says from receipt to completion of hearing: five per cent within 90 days; 17 per cent in 91 to 120 days; and 46 per cent in 121 to 180 days. Cumulatively, that will give us that 68 per cent of the hearings are being completed at—

The Chairman: But you have 31 per cent between 180 and 365.

Mr Chadha: Right.

The Chairman: If you take 31 per cent and 46 per cent, you get 77 per cent between the 121 and 365 days. Am I right?

Mr Chadha: I have not understood that, Mr Chairman.

The Chairman: It is on your last page.

Mr Chadha: Okay. Seventy-seven per cent—

The Chairman: Are between four months and a year.

Mr Chadha: Between 121 days to a year. Yes, that is right.

The Chairman: Okay. Any other questions?

Mr Velshi: Doctor, there is a scenario I want to put to you, which I think is causing a lot of concern to me and to a lot of other members. The scenario is that a lot of repairs are being undertaken by landlords. Some are necessary. Some are not necessary. I know it is upgrading the property every time some repair work takes place, but based on unnecessary repairs rents are allowed to be increased over and above the 4.6 per cent or whatever the allowable figure is. This is then used to increase the price of the property in selling the property. We then get into a stage where, once the property is sold, the new owner can apply for an increase in rent again based on the refinancing costs.

This is causing a lot of concern, because we feel it is not protecting the tenants and it is happening just for purposes of profit. While I have nothing against profit, where it is affecting so many tenants does the law allow you any flexibility in making judgements based on these types of requests by landlords?

1110

Dr Ray: There are two aspects to your question. The first one touches on the standards of maintenance and improvement issues. As you know, the legislation through section 75 allows for a number of expenditures that relate to the standard of maintenance. It also allows the board to deduct certain amounts if the facts show that there has been a change, a deterioration or removal or reduction of services.

In addition to that, section 96 of the legislation allows the board to not recognize certain expenditures claimed if the facts prove that there has been ongoing intentional neglect on the part of the landlord.

There is another section in Ontario regulation 440/87, subsection 20, which empowers the board members to question the landlord's prudence when he buys a property. If he is buying a property that costs millions of dollars, it behooves that person to be prudent to see how much it may cost to bring that building to par, and he has to make sure that that expenditure takes place within one year, 12 months, from the point of acquisition of the property.

Those are some of the enabling provisions in the legislation which help the board members to ask very direct questions of tenants to ensure that costs are not unjustified. Tenants are able to say: "Look, the landlord is asking for \$300 a unit for improvement or upgrading and we have not seen anything. That's not true." Board members are able to go and investigate the premises to ensure that some improvement has taken place.

But there is a down side to this. To prove deterioration in a property, one must have—in health we speak of an epidemiological study, a study over time. One cannot have a Polaroid shot of a building and say "Yes, the deterioration has taken place." One has to have a point of time from which to judge.

On the question of financing costs and what may or may not happen, if I understand the drift of that question, I would like to request Mr Burnside and Mr Chadha to address those.

Mr Burnside: There are restrictions that exist under subsection 79(3) of the act, where increased financing costs and acquisition are restricted to a five per cent pass-through. Therefore, that has an effect as far as limiting the amount of rent increase that could result from dispositions by landlords.

Taking that into account, together with the treatment of capital expenditures and the system of rent reviews, a cost pass-through system, which means that if costs have been expended and the board is satisfied on appeal that they have been, then those costs will be recognized and passed on with certain restrictions that exist under the legislation. But there is no profit component relating to capital expenditures or financial loss. That does not come into play for a large amount of the housing stock in the province that was occupied before 1 January 1976.

For what are called post-1975 buildings, there is an economic loss

determination which allows for a limited return on the invested equity, but as to the questions that were raised concerning the capital expenditures and financial loss, really, they do not get into the situations of profit. They are just recognizing costs that have been expended, and pass on, by way of treatment, those costs into the rent.

Mr Velshi: To go under this five per cent pass-through, first, is that allowable every year or is there a restriction in the time frame for that?

While you may not be looking at the profit sector, I think the market system and situation demands that we look at it, because we just find the spiral is upwards in terms of rental properties. Nobody wants to build rental properties, yet everybody wants to buy and sell rental properties. In effect, the impression is that a situation is created where the use of the act, or perhaps the misuse of the act, by many people to increase profit in the resale of a property—you may not be giving profit for repairs, renewals, etc, but it is being collected in the marketplace.

Mr Burnside: Well, there could be a separate question there, Mr Velshi, because what we are concerned about in rent review is to ensure that whatever is increased in tenants' rents is justified on a cost treatment. Other profits that may or may not be exigible in the marketplace by way of spiralling costs of land really do not impinge on our program to the extent that we are just dealing with the rent bases and increasing the rent bases.

Whatever exists as far as market factors outside of that really is between business people who are buying and selling particular buildings, but the 5 per cent cap which exists on financial loss is 5 per cent on an annual basis and it is possible that this 5 per cent could be passed on over a number of years, either on further applications or by what are called phase-in orders under section 92 of the act.

The Chairman: Okay, I have one question and then Jerry Richmond has one question he would like to ask. My question is: Since 1976, since the new legislation came into effect, what percentage of your appeals has been from the buildings that have been built prior to 1976?

Mr Chadha: I am sorry, we do not have that figure readily available. We have not been keeping that statistic separately for pre-1976 or post-1976.

Dr Ray: But if the committee wishes, we will make that figure available.

The Chairman: I would be interested to know the amount of applications that have come through post-1976.

Mr Richmond: Just a point to clarify for myself and other members of the committee your document 3, which consists of three tables, I want to make sure I understand this and, in turn, assist members. You have three tables. The first one covers—correct me if I am wrong—your performance in completing hearings: the time between the hearings and the orders. The first table, document 3, page 1, covers your performance over the six-month period from 1 December 1988 to 31 May 1989. The subsequent two pages of your document 3 split off the subsequent three-month periods.

Mr Chadha: Yes, that is right. The first table gives the summary of the entire six months and the next two tables deal with the first three months and the second three months.

Mr Richmond: So the first table is roughly cumulative of the succeeding two tables?

Mr Chadha: That is right. What we were trying to see is whether there is any trend, any improvement during the second three months compared to the first three months? We find that if you look at the first category where orders are issued in less than two months, in the first three months 49 per cent of the orders were issued in less than two months. In the second three months, 56 per cent of the orders were issued within less than two months. In that area there is an improvement, but in the next item, two to three months, there has been deterioration, because—

Mr Richmond: But, of course, as you have indicated, these figures—all of us who administer offices know that some of these time periods, not to grant you an easy way out, might be beyond your control.

Mr Chadha: That is right.

Mr Richmond: There may be in the last three months, just due to random circumstance, 20 very, very complex applications over which you have no control, whereas in the previous three months they were relatively simple for whatever reason.

Mr Chadha: That is right. But basically we were just trying to see whether there is any improvement, whether those situations are the same, just for our own information.

The Chairman: You were not trying to confuse me?

Dr Ray: No, Mr Chairman.

Mr Richmond: The other clarifying point: At the bottom of your document 3, page 1, you have included overall averages for 1988-89. Is that for the fiscal year?

Mr Chadha: That is right.

Mr Richmond: So those are for a different time period than in this table.

Mr Chadha: That is right.

Mr Richmond: So those figures are of general interest but they are not directly comparable to the time periods in these tables.

Mr Chadha: That is right. That is why we indicated them separately at the bottom, so that you could see how, during the last complete fiscal year—

Mr Richmond: I just wanted to make sure that I was reading these correctly.

Dr Ray: Again, among family members one can say this: Going back to my opening statement, one must always be extremely strict with this internally so as to look good externally. One word I fear—I have nightmares about—is "backlog," so I am terribly tough on my members and my staff.

1120

The Chairman: Mr Faubert, you had a supplementary?

Mr Faubert: Actually, it was a supplementary to Mr Velshi's question, if you will allow it now.

The Chairman: Go ahead.

Mr Faubert: I think we could get off the statistical thing and on to some of the other factors.

It was a question just to settle something in my own mind here. It is identified by Dr Ray that the major complaints tend to be in maintenance and challenges to costs put forward by the landlord in terms of maintenance to the building. This seems to be the major challenge.

My experience is that the major appeals come after the sale of a building when the landlord attempts to pass through his mortgaging costs. How do you actually check the mortgaging costs as being legitimate and how do you deal with the internal flipping within arm's-length corporations which are really the same companies? You seem to disregard this. At least the reviews I have been to seem to disregard that as a challenge.

Dr Ray: The Statutory Powers Procedure Act—and I do not mean to be presumptuous again, Miss Roberts. I ask your forgiveness for not knowing that you were a lawyer. I did not mean any harm.

Miss Roberts: I do not know it some days myself. I will admit it.

Dr Ray: The Statutory Powers Procedure Act gives enough power to the board to look for any evidence. They can look to documents, actual bills, invoices, anything which can prove or not prove, and members are being trained each month. Part of our sessions deal with what you look for as evidence that is credible. Mr Burnside will give you more information on that.

Mr Burnside: Landlords are required to file any financing documents they are claiming in support of their costs. Also, the board has undertaken title searches at the panel's request and there have been instances where close examination has been done also of filings under the Business Corporations Act, where they have a directory of directors and officers. It is possible under subsection 49(2) of our legislation to look through a series of transactions if we feel that perhaps there has been a disposition of the property from the left arm to the right arm of the same shareholders.

I am aware of a number of hearings where members have required the landlord to present evidence, in some instances even have shareholders come forward and give evidence as to what are the various relationships between different companies. There has been some detailed scrutiny in a number of hearings that I am aware of now.

I cannot say it happens in every instance, but certainly the board members are aware that these types of transactions could occur and they are trained to look out for them. There have been instances, as I have indicated, where they have actually closely examined and in a couple of instances have not been satisfied that sales have taken place.

Mr Faubert: What happens in that case?

Mr Burnside: They do not recognize the financing cost increase.

Mr Faubert: So an appellant before the rent review could actually request that that information be sought. Is that the right of the appeal?

Mr Burnside: It is possible on appeal. We have authority to investigate under section 107 and we have authority to direct in evidence of parties under section 108. We also have powers—

Mr Faubert: I do not challenge your authority to do so, but what circumstances kick that in? A request by the appellant or by the officer hearing the case?

Mr Burnside: It is either a party who is concerned and wishes to bring forward his question that perhaps there is something peculiar with the sale transaction or the cost flow—

Mr Faubert: Who would do that?

Mr Burnside: It may be that after a review of the file, the board members or the panel itself may feel that further scrutiny or investigation or inquiry needs to be made. It could occur either way.

Dr Ray: In fact, there are three members who are extremely capable of detecting things which are happening behind numbers or behind activities.

Mr Faubert: I appreciate that, but if you did not have them appear before one of those three, you would be in a very invidious position saying—is it automatically done on request for a challenge or an appellant before the board?

Dr Ray: They are being trained to look for it.

Mr Faubert: Okay, that is what I am looking for.

Mr Harris: Not being a regular member of the committee, Mr. Chairman, I apologize for being late and trying to catch up. I do have a few questions that I would like to ask, some of which may get may get into other areas. If that is not in order, just tell me.

I am not an expert in the legislation. I guess it is section 37 that mandates your parts of Bill 51. Is it section 37 or section 31? It does not matter. One of the things, though, that concerns a number of people—I am wondering if you can tell me what it is in the act that compels you, and I assume there is something there that compels you, to give landlords an award higher than that which they ask for or request

Again, I am not a technical expert but I am asking from a very serious viewpoint, because so many times when we get involved in legislation, and in this legislation of the whole rent review process, goodwill and common sense are thrown out the window and you are required to interpret an act.

I assume you do not have the power to use common sense in this particular area, because it does not make sense to me, as one who is not a great fan of this legislation, it does not make sense to those who are great fans of this legislation and it does not make sense, really, to landlords or tenants when a landlord can ask for a 20 per cent increase, and by the time you people are finished with him, get a 30 per cent increase.

I wonder if you can tell, and I think it must concern you, what is it in the act that compels you to give the landlord more than he wants, needs or asks for.

Mr Burnside: The section in particular that would allow the board, on appeal, to award more than what is requested is section 90. Section 90 indicates that the power is discretionary, because the word used there is "may." As a general answer, it may very well be that in a cost pass-through system, one might be concerned in analysing the costs. If in fact they justify a higher rent increase, if they are not recognized, then it could very well be that since it is not possible to bank these costs over to a subsequent review, they may be lost for all time. That is a consideration.

Also, in general terms, the board is concerned that tenants may be prejudiced by thinking that they are going for perhaps a 10 per cent or 20 per cent award, only to be surprised that a higher amount is awarded. Section 90 does have a buffer to the extent that the higher amount cannot be collected during the first year of the order. However, it still represents a higher than anticipated amount, which the landlord could go to in the future.

The board has been concerned about this and attention has been brought to it in all board members' meetings which discuss matters of general interest relating to the legislation. Recently the board, I believe on 8 June of this year, had a discussion relating to section 90 and what sort of criteria or tests should be considered in awarding more or not awarding more than the landlord requested.

There have been cases where the board has declined to award more. I could draw your attention to 82 Millside Drive in Milton, which was an appeal order issued on 25 May 1989 where the panel declined to award more than the landlord requested. I just mention that for the committee's attention.

Mr Harris: I assume, from that, that the panel determines that if the same rules were applied to his building as to all others, the landlord ought to get more money. You have discretion then to say you must insist on taking more money, as opposed to having discretion as to whether you make that order or not.

1130

Mr Burnside: We have discretion, and if in fact more is ordered, it increases the maximum rent. The landlord cannot collect that increased amount in the first year and it would be voluntary whether or not he goes up to it in subsequent years. The landlord may possibly take less in future years; it is up to him.

The Chairman: But he could take the full amount.

Mr Burnside: He could take that full amount the next year; that is correct.

Mr Harris: Let me understand. If you order, are there three things that happen then? First, you say, "This landlord's really entitled to more money than he's even asking for," but in this case you have the discretion to say, "However, we are not going to give it to him because he isn't asking for it." Or second, you can say, "It should be there and he can get it if he wants

it or not if he doesn't want it." Is there a third option that says he must charge it?

Mr Burnside: No. I would qualify that if we were to grant more than was requested, section 90 says they cannot get it during the first year, so that provides the protection to tenants that no matter what, landlords cannot get more than they requested during the first year of the application.

Mr Chadha: Perhaps I may just add that another requirement is that the landlord has to provide three months' notice before any rent increase can be collected. Supposing there is an order that we issue with an effective date of 1986, say, providing a higher maximum rent, not only for the first year but even for the second year, if the landlord has not issued three months' notice indicating that rent, he would still not be able to charge. Only after providing three months' notice can he raise that to the maximum rent.

Mr Harris: Can a landlord charge less at any time?

Mr Chadha: Yes.

Mr Harris: Than what rent review says is there, either after the appeal process or before? If the rent for a particular unit is supposed to be \$600, can he say, "It's \$600 but you can get in for \$400"?

Mr Chadha: That is right. What the system is ordering is the maximum rent the landlord can charge, but for anything less than that, there is no restriction.

Mr Harris: What happens to a landlord who charges less and then changes his mind and says, "No, I'm going to go up to the maximum now"?

Mr Chadha: The landlord could do it—

Mr Harris: With three months' notice?

Mr Chadha: —with those two restrictions. One is the three months' notice and the other is that not more than one increase can be charged in any 12-month period.

Mr Harris: In any given year.

I want to ask you about the rent registry. I gather that is really not your department. Is that fair?

Dr Ray: It is not our department.

Mr Harris: Is it of any concern to you? Does having the rent registry in place help you?

Dr Ray: When we get the appeals, the first thing we try to determine is whether that rent is registered in the system. That is one thing we do automatically. That gives us a handle on whether or not the information being provided in the documents is correct. It is enormously helpful that way.

Mr Harris: To have the rent registry up and running?

Dr Ray: Yes.

Mr Harris: You are no doubt aware that the rent registry is not working, that they have not been asking people for the last year, I guess, to register. When landlords request to register, they are basically being told, "We don't think we have the right form," or, "We don't know," or, "The computer can't handle it. Please don't bother registering." I am paraphrasing substantially, but—

The Chairman: That is not their jurisdiction, Mr Harris.

Mr Harris: I understand it is not your jurisdiction. Do you care if the rent registry carries on? Do you need it? Does it help you with your work? Does it save you time and money if 100 per cent of the units are registered?

Dr Ray: As I mentioned earlier in my first day before you, the board is indeed concerned about a number of different things: the rent increases the facts would lead us to accord, the housing situation and a number of things. Yet we must keep reminding ourselves that we have to operate within the mandate of the board. That is the best I can say.

Mr Harris: Can I ask you this. When I was in business, if something was not going right and my job description said I was to do this and that, I would go to my boss and say: "I could save you \$5 million a year or I could save you 50 cents or I could save you this or I could use my time much more efficiently if we had this." I guess I am asking you from that context. The rent registry, I think you have indicated, would be important to you. Surely it would save you an immense amount of time in resources in having to do an investigation if you could check right away and find out that rent is there.

My question is: (1) Would you concur that it would save you considerable time and money if that was up and running? (2) Have you made this known to the minister and do you have any handle on how much time and money it would save you?

Dr. Ray: Two things happen. First, the vice-chairman, being the senior public servant, is a member of the board. He meets regularly with the administrators to discuss a number of areas that concern us both. That is included here. Second, the legislation requires the chairman of the board to make reports available whenever he or she is requested. When I am requested, I shall be in a position to do so.

Mr Harris: So you have not been requested so far?

Dr Ray: We are tracking different kinds of information for reports in the future.

Mr Harris: Would it save you money if the rent registry was up and running?

Dr Ray: A number of things would help us. When the computers we have invested in are fully operational for all of us inside, that will be immensely helpful. The registry as a concept, as an instrument, is enormously helpful to everyone in the province.

The Chairman: Any other questions?

Mr Harris: I am not quite ready to leave this area. I understand that the rent registry is not your responsibility. Let me come at it in a little different way. The information we are getting is that in fact you are

going to become the rent registry, that they feel you will be able to work your way through all the units in the province faster than they can get them registered. Have you been told this or would you agree with that?

Dr Ray: Mr Chairman, I am a very tough manager, as you have found out. At the same time we are, all of us, infinitely limited as human beings. I could not possibly speculate that the board will be doing any better than any other organization, let alone the sister organization in the Ministry of Housing. We have a tremendous case flow. I want to do better than any other board and agency in Ontario. That may be a totally unrealistic dream on my part, but an idealist must be a realist and the realist must be an idealist. So we are working pretty hard within our own organization.

It would be presumptuous of me to speak on the ability or inability in the future for all of us. Something may happen. We may get very complex cases dealing with whole building reviews and it may slow us down. Magically, we may have members doing so many cases a month that we run into a problem of attrition. I could not possibly speculate in the area of human resources or planning right now.

Miss Roberts: Just for my own information, after you complete an order, do you pass that back to the rent registry? Is that what occurs? I am talking about process now. You would search the rent registry to begin with, as soon as you received an appeal. You would do your process and then the order itself would be sent to the applicants, all the people who are interested, plus the rent registry would receive a copy of your order. Is that correct?

Mr Chadha: That is right.

Miss Roberts: So you have an input into it as a result of your function.

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Mr Chadha: Yes. As soon as any order is issued, we send a copy of that to the local rent review office, as well as a copy to the rent registry so that it can update its records.

Mr Burnside: In fact, the statute requires that in clause 69(a).

Miss Roberts: So in the long run, you are going to have valuable input—I think that is what my friend has been saying—but not necessarily the only input.

Mr Harris: I guess the legislative mandate is that the input would come, and in fact all landlords are required to register whether they want to ask for an increased rent or whether there is an appeal or not.

What concerns me is that this process has completely broken down and is not occurring. The forms are not being made available and landlords are being told: "Forget it. We can't handle it. We don't know what form to use." I realize that is not this responsibility, but it is very important to the work they do.

The other thing that appears to be happening is that the other way to get on the registry is that once you are finished with an appeal, that information then gets sent to the rent registry. It appears to many of us,

given what is happening, that this is the vehicle they are relying on over a period of time to get all the rents registered.

Mr Chadha: Perhaps I may just add that I think there is a requirement in the legislation that before anybody's application for rent review, increased rent, can be considered, that landlord has to file with the rent registry. If somebody has not filed so far, or even if it is in a category of less than six units and the landlord wants to have a rent increase, my feeling is that the landlord is required to file with the rent registry in any case. So for any applications that are going to the first level or to the board, the landlord would have filed with the rent registry. We cannot really substitute for that particular requirement.

Mr Harris: If they do not wish to go through the process, there does not appear to be a vehicle for them to get registered. I guess this is what I am saying.

Mr Chadha: From our side, yes. We are concerned with the appeals that come before us.

Mr Harris: Are there any parts of the legislation you have to operate under that in your experience you feel you could do your job better and more efficiently if they were changed?

Dr Ray: We have just begun to deal with a decent case flow, a modest to decent case flow. I would hope the case flow will be good and high enough for us to do a good job for the province. As we accumulate experience, we will track certain areas, of course, by necessity, the areas which we could benefit from.

Mr Harris: So you are monitoring it. At this stage, though, you have not made any recommendation.

Dr Ray: No.

Mr Harris: Would it not be the goal of the government that nobody ever appeals to you? Is that not really what everybody should be striving for?

Dr Ray: At one point in my life, I was involved in the program to improve equality between men and women. My minister was the Honourable Lincoln Alexander, and he used to call me Doc. "Doc, what would be your dream?" I said to him, "Mr Minister, I would like nothing better to have the women's bureau, of the Department of Labour become totally extinct."

I hope that some day the appeal body is going to be a very slim, trim, small organization, when it will only look at extremely specialized, complex cases, few and far between, to reflect where the whole judicial system is going in Ontario, that not all cases can be brought to the court system. Maybe people will become so comfortable with resolving difficulties among themselves that cases may not have to come to the appeals board.

Mr Harris: I wonder if I could ask a question in one other area, and that has to do with the staffing of the board. I know the legislation does not allow for part-time staff; everybody must be full-time. I guess I would ask you, do you concur that it makes sense? I would also ask you, what do you look for when you are hiring somebody? What qualifications? There is no university degree in rent review officiating. What are the qualities that indeed you look

for? Do you have a sample? When you advertise for positions, what are the types of backgrounds that you are looking for?

Dr Ray: I have been advised by all my senior colleagues who are experienced in the rent review board for 13 years that to have part-time members would be only inviting more trouble than we can deal with. For one thing, their loyalties are divided. Second, to track these resources down when the needs are there is extremely difficult. That is what the experience shows.

As for the qualities or qualifications that we seek in Rent Review Hearing Board members, first and foremost, is the ability to receive really complex information, legislative and numerical information; being able to make sense out of that vast amount of information, sometimes 20 or 30 boxes full of information, and synthesize; being able to grasp the issues and communicate what happened at a hearing in simple, layperson's terms. That is what we look for.

It requires infinite patience. The endurance level must be very high. Ability in the legal field is extremely helpful; the accounting field, business experience, communications, teaching. I have at least yearned for, and I am trying to build, a board which is multidisciplinary in approach. I do not believe in one particular technical profession being pre-eminent in any board or agency in this province or elsewhere, where specialization takes over a generalist's skills.

Mr Harris: Do you have the backgrounds for the people who are on the board? You are looking for, it almost sounded to me, somebody who has an accounting background and is a lawyer and then—

Dr Ray: We have provided the biographical information to the committee before. We have lawyers, accountants, broadcasters, former municipal politicians, communicators, teachers, journalists, specialists from the nursing field, community activists, people who have been very involved in social activism developing communities. All different kinds and backgrounds are represented on the board.

Mr Harris: I am very interested in this. When you have a hearing, do you always have a three-person panel?

Dr Ray: For 30 per cent of our hearings, three-member panels are requested.

1150

Mr Harris: Would you, when you have a three-member panel then, be looking to make sure that there is an accountant there to understand the figures and to explain that along with a social activist and, perhaps, a lawyer? Do you look for that kind of mix when you are putting your panels together?

Dr Ray: Depending on the complexity of the case, that is what we strive to do: not necessarily have an accountant or a lawyer at the same time, but make sure that an individual has had enough experience in both fields or actual case work so that he or she can bring to bear the observation or the analytical skills which are necessary.

Mr Harris: Do you advertise these positions and then people apply? How do you get people for these jobs?

Dr Ray: We get applications from various sources: Individuals apply directly to the chairman's office, some applications are received by the minister's office, and some applications are received elsewhere. All these applications are sent to the chairman's office; then I go through the curriculum vitae against the qualifications that the board should benefit from. Then I have a short list prepared and interviews are held in two stages: one is an oral interview to determine what kind of abilities this person would bring to the board, and the second is a written segment of the interview to ensure that this person can express himself or herself in writing. Then the recommendations are made and, of course, from there it is beyond the chairman's purview.

Mr Harris: It goes from the chairman to—

Dr Ray: To the minister.

Mr Harris: And from the minister to—

Dr Ray: All boards' and agencies' appointments are orders in council.

Mr Harris: So you do not advertise.

Dr Ray: No.

Mr Harris: I have one last question. On these charts: "For the purpose of this analysis, hearings held by a three-member panel have been counted as three hearings." I assume these charts are to talk about the workload?

Dr Ray: This was a different question, as you recall, to show where these members were at a given point in time. That is why the charts show geographical distribution at that point in time. Usually, we count three-member panels as one hearing.

Miss Roberts: If I might just intervene? The question was put to them directly, "How often do you have to ship one member from one region into the other regions?" So it was for members' movement and for cost-effectiveness: "Do you have enough members in one area; how often do you have to ship them around?" So that would be on members only, not on the number of hearings.

Mr Harris: About 30 per cent, you told me, are three-member panels?

Dr Ray: Yes.

Mr Harris: And who requests the three-member panel?

Dr Ray: The parties; either the tenants or landlords.

Mr Harris: So if any one of the two parties asks for three, they get three. If they do not, you give them one.

Dr Ray: I have no power to give them anything else.

Mr Harris: Than one; so if you had a complex case and they did not request three, you cannot give them the three?

Dr Ray: No.

Mr Harris: I have one last question. You make the decision in a final order. If one of the parties is not happy with that, where can it go then?

Dr Ray: The legislation allows for either party to take the case to Divisional Court only on a point of law.

Mr Harris: Does the Ombudsman have any jurisdiction?

Dr Ray: Yes, we have been visited by the Ombudsman's office. Again, they can go to any office.

Mr Harris: Thank you.

The Chairman: We have about five minutes and we will wrap up. We anticipate that next week we will probably be able to go in camera if the committee desires. Before we adjourn I would like to ask you: We will be making some recommendations and I wondered if you had anything that you would like to say that could help us in some of the recommendations that we may deal with; if there is something specific that you would like to see us recommend to the ministry that would help you or would perhaps improve what we are doing. Is there something that you could give us that we could put together that would help?

Dr Ray: Mr Chadha, and anyone here?

Mr Chadha: I think there are a couple of areas. One was the role of the pre-hearing conference, and last time we discussed a little bit about mediation and whether there is any scope for that kind of activity. If the committee could apply its mind and give us some guidance and directions, we would appreciate that very much.

The other would be that if we could get some advice in the area of the public education of tenants and landlords in what way we could help, that would be very welcome.

The Chairman: Is there any area that the legal counsel may see where we could make a recommendation with regard to the act that perhaps could help?

Mr Burnside: I do not know whether we have really touched on that. I think the chairman of the board has indicated that we are tracking some areas of concern, but we really are not at a point where we could definitively make any statement as to possible changes. I am not sure at this time whether we could offer any suggestions to you.

Miss Roberts: Is there a period of time within the near future when you might be putting together a report? We could hold off for two or three months, but if you are saying that you want at least two years' experience under your belt before you come forward with a report, then we cannot hold off on that.

Mr Burnside: I think it is more in the long term than the short term.

Miss Roberts: Okay.

Dr Ray: In the area of public education, it would be enormously helpful for us to have guidance from the committee. In whatever communities you ask us to be there to speak with, it would be enormously helpful. Any problem the committee members see through our hearings or become aware of about our hearings, I would like to know, so that we can continuously monitor the quality of our service to the people, whether it is through the hearings or contact with offices. If you contact offices and do not get satisfactory answers, I would like to know.

The Chairman: I think the public relations is a big factor, from what I have heard, and if we can do more in that line, I think it is important. As I said, people come to me and they do not realize it until they are the ones involved, and all of a sudden they do not know what to do.

I know the kits that I got are great. It would just be nice if they were in more people's hands.

Is there anything else?

Mr Miller: Just one further question. Mr Harris mentioned the fact that the rent registry was not working and that people were being— Did you not indicate that you use the rent registry? From your point of view, is it working?

Dr Ray: As I pointed out earlier, the first thing we do is to check whether or not the rent was raised.

If I am allowed to leave certain comments with the committee, on behalf of my members on the board and my senior colleagues, this has been one very positive, very helpful exercise for the board itself. As you know, it is a very young organization and resolute in making improvements as it goes and strictly monitoring certain areas. I take this as a further incentive for me and for my colleagues, staff and members to make greater improvements. We would benefit from all advice and assistance and guidance that you will accord to us.

The Chairman: Thank you very much. I hope that when we get the opportunity to write our report, some of your staff would be available. If we need some questions answered, we could contact them.

Dr Ray: Indeed.

The Chairman: I think that is everything. On behalf of the committee, I thank you for appearing before us. It was a delightful exchange of ideas, and as you said, it is very young, but perhaps it was a good time to look at it from our point of view and to try to help streamline it, if anything. We work together. Thank you very much.

Dr Ray: Thank you, Mr Chairman.

Miss Roberts: We have appreciated your help.

The Chairman: If we are going to meet in camera next week, I would like the committee to indicate that would be its wish.

Miss Roberts: If I might, I think that would be appropriate for our discussion of this particular agency, but my problem is—and I would like to put it on the record today—that there are no members from the third party other than yourself, and if that is an indication that we are going to have an argument as we have had in the past and that it was not agreed, I would suggest that we go open first and discuss it, you know, because I am not prepared to go through that argument again.

The Chairman: Thank you. That is agreed to. We will be in open session. Adjournment until 10 o'clock next Wednesday or thereabouts.

The committee adjourned at 1201.

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A-6

STANDING COMMITTEE ON GOVERNMENT AGENCIES

ORGANIZATION

WEDNESDAY 28 JUNE 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitution:

Daigeler, Hans (Nepean L) for Mr J. B. Nixon

Clerk: Brown, Harold

Assistant Clerk: Deller, Deborah

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

Richmond, Jerry M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 28 June 1989

The committee met at 1023 in room 228.

ORGANIZATION

The Chairman: I call the meeting to order. We are reviewing the Rent Review Hearings Board and we have some recommendations before us.

Before we get into that, I would like to get some commitment from the committee with regard to sitting time when the Legislature is not sitting. I am tied up in September on another committee, so that would leave us July and August. I presume we will need three weeks. Three weeks is what we have in our budget. We should also be looking at what we are going to be dealing with, because the research people will have to put that together.

So there are two items: What are we going to deal with, and when are we going to sit?

Mr Breaugh: I would suggest that if you want the research done, we cannot start in July. The research component of what we do means we are looking at the latter part of August as reasonable sitting dates. If it is three weeks, when you sit down with the House leaders to get a block of time, time in July for this committee is not very useful.

The Chairman: That is right. I would suggest we book the last three weeks of August. It will be up to the House leaders how they juggle it around, but we have to put something in.

Miss Roberts: We are going to require three weeks?

The Chairman: We will put in for three weeks. If we do not need it, that is fine, but you cannot add to it.

The Review Board of Psychiatric Facilities I know was one at the top of our list—

Miss Roberts: I did not bring that information.

The Chairman: There is a memo being copied now. It will be here momentarily.

Miss Roberts: What you are indicating is that you will speak to the whips about the last three weeks in August and make some determination.

The Chairman: But we have to determine what we are going to deal with. We have some reports that need tidying up: the Ontario Food Terminal Board, the Ontario French Language Services Commission. Maybe we will spend a day doing them.

Miss Roberts: On the French language commission, was the indication not October that we were—

The Chairman: I got a letter the other day from the chairman. I sent it to the clerk just this week; He probably has not had time to get it out to you yet. That letter indicated that it is going to be redundant 19 November, whenever it is. I do not think they are anticipating continuing.

Miss Roberts: Have they done their internal review?

The Chairman: No. They are meeting at the end of July.

Miss Roberts: I think that is what we were waiting for, some chance to speak to them very briefly, a morning or afternoon session or all day if necessary, so we could get their feeling on that, and the end of August would be helpful on that. That sounds good.

Mr Breaugh: What are the other agencies you have on the list?

The Chairman: That is what I was going to ask. What other agencies which we were supposed to be looking at are on the list?

Clerk of the Committee: The Ontario Securities Commission has not been completed; the Ontario Human Rights Commission; the Ontario Environmental Assessment Advisory Committee; the Rent Review Hearings Board—

The Chairman: That is what we are dealing with today.

Clerk of the Committee: The Review Board of Psychiatric Facilities. The questionnaires have not been sent out for the Stadium Corp of Ontario or for the Royal Ontario Museum Board of Trustees, and those have been identified as agencies to review.

Mr Breaugh: How about this for a suggestion? I am a little concerned that we have two or three of them backed up, but we have not finalized the report. Would it be a reasonable idea to try to schedule a block of time, maybe two or three days, to finalize the outstanding reports, just clear the books on those, and then restrict ourselves perhaps to one or two other agencies for review purposes for the remainder of the time? Something like the Review Board of Psychiatric Facilities, perhaps.

Miss Roberts: That is one that I would say is in the minds of all members of this committee and should be considered.

Mr Breaugh: What about something like the museum? I am attracted to the stadium corporation, but I am not sure it is even going to be finished by the time we—

Mr Velshi: We may not have enough information to really discuss it this year.

Miss Roberts: That is right. I would like the museum. I think it was Larry or some member from that area who was interested in the museum. I forget who—

The Chairman: I am not sure who it was. For the first week we could tidy up the ones we have; the second week we could start with the psychiatric facilities. It might take a week to do that one, because I have a feeling we should visit one or two.

Mr Breaugh: How about this as a proposal? We schedule one week of time during the review period to clean up. We now have five different agencies

where we were midway through the process of completing the review. If we had a block of time, we could probably finalize those reports on the Ontario Food Terminal Board, the Ontario French Languages Services Commission, the Ontario Securities Commission, the Ontario Human Rights Commission and the Rent Review Hearings Board; clear the decks on those. We have the research done on the Ontario Environmental Assessment Advisory Committee, the Review Board of Psychiatric Facilities. Then leave on the books the stadium corporation and the museum, but my preference would be the museum for review purposes. That would give us five agencies to finalize reports on, and basically four, more likely three, that would get reviewed.

1030

The Chairman: That sounds good to me.

Miss Roberts: Let's go through that and make sure we are all in agreement. I agree, but just so we all know.

Mr Breaugh: The review would consist of the Ontario Environmental Assessment Advisory Committee, the Review Board of Psychiatric Facilities—

Miss Roberts: We would need a week for the psychiatric facilities and approximately a week for the environmental assessment?

Mr Breaugh: I am not sure that would take a full week of hearings, which is why I am suggesting we put two others on the list.

Mr Miller: Did we finalize the Ontario Waste Management Corp? Did we give a report on that?

Mr Breaugh: The report has been finalized, although I know what you are talking about. We had considered that there might be other matters having to do with that agency that we ought to pursue.

Mr Miller: That is a very crucial issue, getting that thing in place. It has been hanging fire for so long. If there is anything we could do to accomplish that, it would make me feel good. You know how long we have been dealing with it, 10 years, and nothing has happened. I do not know how close it is even now.

Mr Breaugh: If we tentatively scheduled the environmental assessment advisory committee, the Review Board of Psychiatric Facilities, and perhaps had the museum and then the stadium corporation on standby—I think it would be useful to send out the questionnaires on the last two and then perhaps, in another week or so, choose one of them. We may also want to put the waste management group in that mix. When do their hearings start? They have an environmental assessment hearing process under way some time this fall, but I am not sure when.

Miss Roberts: Will someone refresh my memory, perhaps the researcher? When we discussed that, was there a recommendation that we look at it again or did we just discuss among ourselves in committee that we bring it back? I think there was one recommendation that indicated the standing committee on public accounts should look at part of it. Have they done that?

Mr Breaugh: I do not think so.

Assistant Clerk: The committee did report on the Ontario Waste Management Corp. I would have to take a look at that report again, but to the best of my recollection you did not recommend that the committee look at it

again. You did make the recommendation to public accounts, and it has not done a review on it.

The other thing the committee should be aware of is that the Ontario Food Terminal Board, the securities commission and human rights commission are follow-ups you are doing. The committee has already reported on those three and now you are following up on those recommendations.

The Chairman: The human rights commission?

Assistant Clerk: The human rights commission is a follow-up to a consultant's report that was done. Those three are not full reviews.

The Chairman: But the human rights commission may take some time to finalize.

Mr Breaugh: I would just like a block of time set aside to clean up those agencies where we have some kind of follow-up or something like that, finalize that piece of business, then proceed to review perhaps two or three other agencies in the remaining two weeks.

The Chairman: One, psychiatric facilities; two, environmental advisory committee; three, the Royal Ontario Museum Board of Trustees; four, the stadium corporation.

Mr Breaugh: That is the way I would rate them.

The Chairman: Is that agreeable to the committee? Okay.

We will deal with the recommendations with regard to rent review. Do you want to deal with it in open committee or do you want to go in camera?

Miss Roberts moves the committee go in camera to discuss the draft report.

Motion agreed to.

The committee continued in camera at 1035.

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Publications A-7

STANDING COMMITTEE ON GOVERNMENT AGENCIES

ORGANIZATION

TUESDAY 8 AUGUST 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Farnan

Poole, Dianne (Eglinton L) for Mr Ballinger

Clerk: Brown, Harold

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday 8 August 1989

The committee met at 1326 in room 151.

ORGANIZATION

The Chairman: The committee will come to order now with Hansard on. I want to relate to you that this is the standing committee on government agencies, dealing with various agencies, boards and commissions, and today we are here to determine the direction this committee deems appropriate to take with regard to dealing with the resolution of Mr Conway on 25 July with regard to the Ontario Human Rights Commission. I will open it up for discussion now on how you want to handle this procedure.

Mrs Marland: I would like to express some concern with the agenda that has been placed before us this afternoon. The agenda indicates that we will be dealing with the Ontario Human Rights Commission in camera this afternoon and tomorrow, Wednesday the ninth, in the morning and in the afternoon. It indicates on Thursday 10 August 1989 at 10 am we will be dealing with the Rent Review Hearings Board and the Ontario French Language Services Commission.

It is certainly public knowledge that this matter was referred to this committee by a resolution of the government House leader, Mr Conway. Unfortunately, I do not have the date; I think it was 25 July.

The Chairman: Correct.

Mrs Marland: At the time that it was referred to this committee, it certainly was never my intention in asking—because I had previously asked the Minister of Citizenship to agree that the matter of the Ontario Human Rights Commission be dealt with by a committee of the Legislature. Obviously, that is in every single member's interest and the interest of every single resident of this province because of the allegations that have been made against the Ontario Human Rights Commission.

It may well be that some of those allegations are totally without reason. They may be totally without evidence, and because of the sensitivity of the Ontario Human Rights Commission, it is imperative that we get to the bottom of the allegations about the hiring practices and other matters in the administration of Ontario Human Rights Commission as quickly as possible, because in the meantime the OHRC is operating in a vacuum.

I understand how committees work very well. I have been here four years. I happen to have served on this committee for quite a substantial amount of that time under the chairmanship of the member for Oshawa (Mr Breagh).

I also am aware that when staff members do a briefing in preparing committee members to deal with a matter that has been referred to that committee, they use sources for that briefing. In advance of this meeting today, we all have in fact received a fairly comprehensive report done by our researcher, Andrew McNaught, and his source has been the only source available to him at this time, which is the report of a review of the recent staffing practices for senior positions within the Ontario Human Rights Commission.

That is a report that was released by the Minister of Citizenship on 2 June 1989.

My concern is that is the sole reference point for us to decide what we are going to do about these hearings. It may well be that there are other sources and other reference points that this committee needs to base its discussion on.

This is simply an interministerial report. Even so, there are sections in this report that are quite damaging. If you have been able to read the report, you will recognize there are statements in here that should be of concern to all of us with the one agency that deals with the rights of everyone, from women to disabled minority groups, any individual at all within this province.

We are going to decide who comes before this committee, what is discussed, and whom we hire. In Mr Conway's resolution you will see that we do have the freedom to hire staff, which will include counsel for this committee. It took my House leader and the House leader of the official opposition seven to eight weeks to convince the government House leader that we were serious about this matter coming before the committee and that we wanted to have counsel, because some of the allegations are grave.

Some of the discussion that this committee will be involved with is grave. The responsibility that all of us have is tremendous. None of us wants to put at jeopardy any of the witnesses, nor will we find that many of the witnesses will come before this committee without their own lawyers. My feeling is that if we are going to move in camera this afternoon to discuss the organization of this committee, then we had better be sure that the decisions of this committee and how we will conduct our hearings are not based only on the interministerial report, because there are other sources of concern.

The House leaders agreed at one time that the hearings would be at least three weeks long and Monday to Friday. We were looking at 15 hearing days. How the committee does that is up to the committee. But also, if the committee puts these other matters that are on this agenda for Thursday ahead of this matter, it simply means that the Ontario Human Rights Commission will continue to operate in a vacuum until this matter is dealt with. To put it off another month on top of the three months that the problems have been known out in the province, in my opinion should be a concern to all of us.

Miss Roberts: What I would like to do before we start is have an organizational meeting to decide what the agenda will be. We have been given a tentative agenda to look at. I move, as presented to you, that we move in camera at this time for the purpose of setting the business for this committee for the four weeks that have been allotted to us by the House.

The Chairman: I have a motion on the floor. I have two other people who wanted to speak briefly. The motion is tabled but I am holding it until I hear the others.

Miss Roberts: Okay.

Ms Poole: I was going to make two comments after Mrs Marland's statements. First, it is routine for committees to go in camera when they are discussing organizational matters. I do not think anybody wants to delay looking at the Ontario Human Rights Commission. That is not the purpose of

moving in camera. To so do could, in fact, be seen as expeditious.

I would make a further point that it was an all-party decision of the steering committee members, including Mr Runciman of the Conservative Party, to go in camera. I think that has to be taken into consideration. My understanding of the purpose of going in camera is simply to set the agenda so that we can make decisions as to the length of the hearing, whether there will be travel, whether there will be legal counsel, the timing, all those types of important matters, but it may well be that it can be done in a much more expeditious manner if we are in camera.

Mr Philip: If you look at Mr Conway's motion, it envisions a fairly wide-ranging set of hearings and look at the Human Rights Commission. What the subcommittee tried to do was take into account the fact that the motion by Mr Conway was only tabled and debated on 25 July. Each member of the subcommittee, be the person a Liberal, New Democrat or Conservative, was concerned that we have a fairly thorough investigation into the Ontario Human Rights Commission. No one questioned that, but I pointed out, and I think it was generally accepted, that there are large numbers of groups out there, particularly in the visible minority community, that will want to make comment and make their views known to this committee. It is completely unreasonable not to give those people adequate time in which to prepare their briefs, or whatever they wish to prepare, to present to the committee. It is unreasonable to give Raj Anand only a few days' notice. It is unreasonable to give a deputy minister only a few days' notice.

Therefore, all that the subcommittee was recommending was that we take one and a half days in which we would have a briefing by our researcher for the committee in which we would discuss—and there may be several suggestions of legal counsel as to which person would be the most appropriate legal counsel—whether or not there should be mailings to certain groups of individuals who may have a particular interest in this issue and how we collect those lists or where they may be obtained and to suggest names of witnesses who might be informed in advance that they might be called at a particular time.

It was a long debate and a long struggle, and eventually this inquiry was called. It was called only on 25 July. I think all that the subcommittee felt was, fine, let's get the organization done in a day and a half so that those people who are going to have input into this committee in a meaningful way will have some lead notice. It may be necessary to ask that the House leaders give permission for this committee to sit an extra week or two some time in the fall to deal with those representations or witnesses if there are large numbers of them.

I do not see anything subversive in the fact that, as with other committees, we are planning our organization in camera so that when we go into public sittings we will be properly briefed and have adequate staff and some idea of where we wish to hold hearings so that everybody can be properly informed. That is all that was discussed, to my recollection, at that subcommittee meeting.

Mr J. B. Nixon: I am going to speak briefly in support of the motion moved by Miss Roberts and say that it was the former minister who committed to full public hearings on this issue. What this issue is remains to be debated during the course of the public hearings, I expect. None the less, the minister committed to public hearings. It was the government House leader who moved that this committee conduct hearings on this matter.

As the former minister said, we have nothing to hide. As a member who was at the steering committee, there was no question even raised as to why committees go in camera to set their agendas. They have always done it and no one even thought, "Does that mean they have anything to hide?" No. What it means is, we are conducting our business as committees have conducted their business for decades at Queen's Park. What you are trying to do is turn this into a political issue, when actually it is an administrative responsibility of the committee to arrange and order its affairs in the manner in which it always has done that.

I cannot think of any inquiry that has ever been conducted by any standing committee that has had its agenda arranged publicly. You sit down and you do this. I do not remember your ever raising this issue before, Margaret, in committees I have sat on with you. In the standing committee on public accounts and the standing committee on government agencies, you have never said we should not be in camera when we are arranging our business. We always do that and we always get along when we do that. I do not understand why you do not want to get along today.

The Chairman: Mrs Marland, for a couple of minutes, and then I would like to say a few words.

1340

Mrs Marland: Mr Chairman, I think it is a little naïve if we try to listen to comments from our colleagues.

The member for Elgin (Miss Roberts) said she thought that we would be pontificating for the record. I would like to say for the record that I am not pontificating for anything other than for the cause of human rights in this province, which has been in a vacuum for three months since the first problems were identified with the Ontario Human Rights Commission.

I hear now that there is a motion placed on the floor by a government member of this committee that this committee sit for four weeks. I think that is what the motion said. Am I correct?

Miss Roberts: We already said for four weeks—

Mrs Marland: I am just asking what the motion is.

The Chairman: I will read it before—

Miss Roberts:—as advocated by the House.

Mrs Marland: All right.

The Chairman:—we will determine the business.

Mrs Marland: Now, what I need to know, and what I need to know not in camera, is what kind of commitment the government members of this committee have to spend sufficient time on the Ontario Human Rights Commission, because I think where we are dealing with human rights, you can look at the subjects of the Rent Review Hearings Board, which also deals with rights, and you can look at the French Language Services Commission, which also deals with rights, but ultimately any appeal under either of those other two subjects which were scheduled on this agenda—which is all I could deal with when I came in here today and why I did not want to go in camera—any appeals from those two

agencies would ultimately end up with the Ontario Human Rights Commission.

What I am saying is right now, I am more anxious to return the integrity of the OHRC. The only way that can be done is if we, as a committee, can agree to devote whatever time is necessary. If we are saying that the government has allocated us four weeks, I want to hear from the government members whether, if we agree on three weeks on OHRC, is that something that you can agree to and have a week be allotted to these other two matters that have been put on the agenda that is before us today, because the government House leader, the official opposition and third party House leaders asked for three weeks.

The Chairman: Mrs Marland, I would like to indicate that after we had our subcommittee meeting, and that was one of the reasons why we had it, I sent a letter to all the House leaders asking for a further two weeks. We did not get those other two weeks, but I would indicate that the resolution of Mr Conway, the House leader, would certainly take precedence over many of the other items that we had to deal with on our agenda. I am sure that it will.

It will be up to every member of this committee to determine if we want to spend the four weeks totally on the human rights commission or not and it will be the committee's decision. Mr Breaugh and Mr Nixon.

Mr Breaugh: I must say I am a little confused by this. This committee decided some time ago, on its agenda for the summer session, that two matters had to be finished up, concerning French language services and the rent review board. The committee as a whole decided in the spring organizational meeting that it would try to allocate some time in August to clean up that work. So that is where that came from. It is certainly no secret and it was done by the committee on a previous occasion.

However, I do want to put a couple of concerns on the record now. I sense that some members want to start the hearings on the human rights commission now. That would be quite wrong. It would be very unfair to all involved to say, "Well, tomorrow morning, we're going to start the review of the commission." People have some rights, some legal rights I would remind you, to be properly notified, to retain counsel and to prepare their own cases to appear before the committee.

I would suggest to you, Mr Chairman, that this is one of the occasions, perhaps one of the few, when this committee would be well-advised to get rather formal in its process. If lawyers are advising people, and they may well be, as to whether or not they should or they should not appear before this committee, I would remind you that the motion gives us all the normal legislative rights to command people to appear before this committee, to secure the documents that you see fit. I would hope that that would be done with some care and some patience and that we would at least give people a reasonable amount of notice.

So I have no objection to the motion to go in camera to discuss, as we normally would, how we are going to do this. But I want it on the record now that I have no intention of playing the part where this committee sits around this afternoon and decides that it will summon people tomorrow morning. People do have legal rights, they will have lawyers and they will require a reasonable amount of notice. You are in the middle of the summer. If I were part of a part of a visible minority group in this city or anywhere in Ontario, and some group of legislators decided in the first week in August that they were going to have these hearings, I think I would quite legitimately claim that I have a little bit of a right to get some notice so

that I can get my organization together, prepare a brief and make the comments to a Legislative committee with a reasonable amount of notice, as I see fit. Many of the people who would be in those groups are not full-time representatives. They have other jobs and commitments. So while I can come here tomorrow morning and start these hearings—that is no problem for me—it is quite unreal to ask a member of a community group to abandon his or her job situation to come to Queen's Park tomorrow. The person cannot do it.

So whether you want to go in camera to discuss this or do it publicly, I would urge the committee at least to remember that we are dealing with people who have rights as we do and obligations other than ours, and cannot set aside their agenda totally for our convenience. So I would ask for a reasonable amount of time for the hearings; that they be done in perhaps a little more formal way than we normally do them here and, above all else, that a reasonable amount of notice be given to people who are asked to appear.

The Chairman: The sooner we deal with this motion, the sooner we can get on with that.

Hon R. F. Nixon: I just wanted to say that I concur with just about everything Mr Breaugh said, that people have rights and that you do not summon them summarily to appear the next day on a matter that they may not be aware or cognizant of and in addition, point out to Mrs Marland that it was not the government that ordered the business of this committee back in the spring; it was the committee itself. We all participated in those discussions. We also discussed whether or not we would take a look at the psychiatric review boards, I believe. We agreed as a group that we would do that. Obviously this matter has come on after we had agreed on an agenda, so part of the reason for sitting down and talking about our agenda today is to deal with all those matters. There is nothing surreptitious about it.

The Chairman: I have a motion to move that the committee go in camera for the purpose of setting the business of this committee for the four weeks allocated to it by the House.

Mr Philip: Just on a point of order: Was the request that you sent for extra time for the committee to deal with this rejected in its entirety, or did they just reject the extra two weeks? Is that correct?

The Chairman: They rejected the extra two weeks. I should have brought the letter up with me. Do you have a copy? I have a copy back from Mr Conway.

Mr Philip: So it may well be that if you did ask for an extra week some time in September or October—I could tell you that the groups I have been in touch with need some time. That is why I think it is important that they have some time.

The Chairman: I think we will agree with that.

Okay, we have the motion before me.

Mrs Marland: I have question on the motion. Does the government House leader's motion say "four weeks" in it?

Miss Roberts: If I might answer that. It was moved that the committees would sit for the amount of time as per the schedule was put out just before we rose, which indicated there would be four weeks for the

government agencies. It has nothing whatsoever to do with anything other than that we order our business for four weeks or longer, whatever it takes; but we were assigned four weeks to sit during this period.

Mr Philip: It always reads, "as agreed to by the House leaders" and "subject to any further changes by the House leaders." That gives flexibility. So I mean you still can negotiate with an extra week if you want.

Miss Roberts: Sure.

Mr Philip: Or if we want.

The Chairman: Okay, I have the motion before me. All those in favour of the motion? Opposed?

Motion agreed to.

The Chairman: We go in camera.

The committee continued in camera at 1350.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

ORGANIZATION

WEDNESDAY 9 AUGUST 1989

STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Faubert, Frank (Scarborough-Ellesmere L) for Miss Roberts

Kozyra, Taras B. (Port Arthur L) for Mr Ballinger

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Farnan

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 9 August 1989

The committee met at 1320 in room 151.

ORGANIZATION

The Chairman: I see a quorum. We should call the meeting to order. We were supposed to start at one o'clock and it is now 20 after. If the committee would bear with me for a few minutes, I would like to bring you up to date on the subcommittee's discussion this morning and what some of the proposals are that we feel would be necessary to continue with our hearings.

This committee is the standing committee on government agencies and deals with agencies, boards and commissions. This morning we had a long discussion with regard to the direction we should take with regard to the resolution from the House put forward by Mr Conway, the House leader, to deal with the Ontario Human Rights Commission.

This morning we decided the right avenue is to have outside legal help. We had our Legislative Assembly legal people here this morning and felt that would be the proper route to go. The other discussion we had was with regard to a budget for the solicitor we would be engaging. We estimated that it could be around \$15,000 and that that is approximately what we should ask the Board of Internal Economy, which meets on 21 August, to approve.

We also thought it would be proper to ask for another two weeks, perhaps the last week of September and the first week of October, knowing that it does not fit into every member's agenda. However, we have to start somewhere and deal with it as a committee to try to get those approvals.

There was some discussion with regard to the last week that the assembly has allowed us to sit, the week of 28 August, that perhaps we could review the two reports before us, the one done by the ministry and the one done by Coopers and Lybrand. However, it was not fully decided whether we would do that. It will depend on the rest of our agenda.

When we asked for our agenda for three weeks, we had several agencies we had not completed; that is, the Ontario Food Terminal Board, the French Language Services Commission and the Ontario Securities Commission. We were also wanting to look at the psychiatric facilities review boards, the Ontario Environmental Assessment Advisory Committee, the Royal Ontario Museum Board of Trustees and the stadium corporations.

Those last four I gave you are the new ones and we should tidy up our report on some of those others. I would like to get the report tidied up on some of the ones such as the French Language Services Commission and the Ontario Securities Commission.

That is the kind of itinerary we are proposing. Is there any discussion?

Mr Philip: I agree with you, all except for one point, and I would ask Brad Nixon to comment on this. I do not think Brad and I were completely

convinced that this committee should deal with the Ontario Human Rights Commission matters on the week of 28 August.

The first argument I believe we were concerned about was that members of the visible minority community—although it was only a couple I happened to talk to last night, I think similar there would be sentiments by a number of others—have expressed, without any solicitation on my part, concern that the standing committee on administration of justice is sitting that week on the police bill. They said that on a matter of that importance it should not be sitting at a time when many people are away.

If we are to sit on this matter, which is also of concern to the leaders of the visible minority communities at a time when they are going to have to monitor or take part in the police complaints bill, and they are not happy about the sittings that week anyway, I think they are going to be really troubled.

In dealing with these reports, many of these people in the visible minority communities should have an understanding or should be able to have the experience, if you like, of members of this committee questioning the people who wrote the reports as to exactly what their conclusions were and what their recommendations are, because the leaders in the various community groups will want to comment on that when they later have an opportunity to do so.

I think it would be most unfortunate if this committee were to deal with a matter of that importance at a time when these leaders are going to be split with working on a matter before another committee and when some of them are going to be out of the country or on vacation. I think Brad had some sympathy for that and that was left in the air, so to speak.

I think everything else you said were firm recommendations, but I am not sure that one was.

The Chairman: I think I indicated it was not determined exactly what we would do.

Mr Philip: Yes, I just wanted to make that clear.

The Chairman: It was discussed, but it was not fully determined how we would operate on that.

Mr J. B. Nixon: I would like to concur with what Mr Philip has said. I think there are really a number of things that have to be considered as to when we meet and when we deal, in particular, with the Ontario Human Rights Commission, and not in any priority. I think we have to consider whether we are going to have a logical presentation to the committee of the information we require by various individuals. It cannot be disjointed, jumping backwards and forwards in terms of time and substance. We have to have a logical flow of the presentation of materials to the committee.

Another thing we have to consider is that as we are reviewing the mandate and function of the Ontario Human Rights Commission. As Mr Philip says, there are going to be a lot of people who will be very interested in what we are doing. The visible minority community, the disabled community, native groups, women's groups, anyone who has a particular interest in the human rights commission will want to follow the discussions and may want to be heard on the matter. It is unfair to them to say: "Well, we're going to

schedule our business so that you can't hear what we're involved in," or, "We're going to make it difficult for you to hear what we have heard, but we'll listen to you." I think they have to have almost as much, if not more right, than the committee itself to be present and hear what is being said in the matters that are before the committee.

Third, to be fair to Mr Philip, he is the critic from the New Democratic Party. He has asked for some indulgence from the committee to be present during the full review of this matter and I think that is only fair. There are other considerations too, but I am not going to go on.

Mrs Marland: I want to be very clear about where I am coming from on this matter. If we truly believe that all groups may wish to be heard from, we must hear from them. If we are truly serious about looking into the problems of the Ontario Human Rights Commission, if indeed they are problems—I only know of the problems with the Ontario Human Rights Commission that have already been identified by the interministerial report that we are referring to as the Amin and Gordon report. If we are going to do all of those things, then as a committee we have to order our business in terms of priority.

In my opinion, at the moment we have a report that has identified some very serious problems, not the least of which have been irregular hiring practices, no employment equity plan, disposition of additional moneys not fully substantiated to the commission's public statements. Under "morale," we have a conclusion that events over the past 12 months have resulted in the degeneration of staff morale, which is now at a very low level. I will not give you all the negative comments from that report.

1330

This Amin and Gordon report is significant enough to make all of us recognize that serious problems exist. I think the fact that the government House leader placed a resolution to the House to refer this matter to this committee, a resolution that even empowers us, as you have recognized in your opening comments, as in the words of the resolution, "the power to retain the services of such staff as it may deem necessary and to adjourn from place to place."

Because of all those things, it is obvious this is not a matter that can be dealt with in a very short period of time, and because of all those serious implications, neither is it a matter that can be put off indefinitely. Quite honestly, I wonder how the Ontario Human Rights Commission at the moment can effectively discharge its mandate, which is to investigate complaints under the Human Rights Code, when its own house is not in order. That is my grave concern.

When this matter was referred to this committee, I think that at a subcommittee meeting of this committee the week before last there was an indication that there were other matters this committee also had to deal with, some of which you have just outlined in your opening preamble, Mr Chairman. Because some of those other matters have been around for some time and because when you are looking particularly at the Rent Review Hearings Board—the French Language Services Commission is the other—some of those areas themselves may in fact be appealed to a body like the Ontario Human Rights Commission.

My feeling is that we have to get on with what we have been asked to do. We also have to spend as much time as we see it a priority to spend in order

to do this job thoroughly. To do this job thoroughly means we cannot agree to a two-week period if in fact we need three or four weeks. Perhaps what we need to receive in writing is what the three House leaders discussed when my House leader asked the government House leader to refer this matter to this committee. On 16 May the Minister of Citizenship (Mr Phillips) felt it was an urgent matter and should be dealt with quickly. Today is 9 August.

What I would like to see the committee do is at least deal with the report of Mr Amin and Mr Gordon and the Coopers and Lybrand report the week beginning 28 August and then request, as part of that condition, that we have permission to sit for the two weeks, the last week of September and the first week of October. If we can have agreement from the government House leader that we may in fact sit the last week of September and the first week of October, or whoever else is involved in granting the permission as to when we can sit, if we get approval to sit the last week of September and the first week of October, and we sit the last week of August on this matter, at least we will know that we will have three weeks to spend on it.

Unless there is assurance that we will at least get started with it in that time frame, I cannot concur with putting these other items ahead of this matter. I recognize we will not have legal counsel approved by the Board of Internal Economy until 21 August, which is a week from Monday, so I recognize we will be without counsel next week. I suggest quite respectfully that some of these other items that have been hanging around for some time, these other subjects, could be dealt with next week and we could sit the week of 21 August with counsel approved and go over the reports, if we do not get the last week of September and the first week of October.

The Chairman: We have a problem. I can see that what is happening is that the critic for the opposition is not available for the last week of September and is not available for the last week of August. I also observe that the member of the subcommittee from the government party concurs that he should have the opportunity to be here at those hearings. It then follows that I see it is impossible for us to deal with the Ontario Human Rights Commission until at least the first week of October. That is the consensus I would draw from what I have heard. If that is the consensus, there is no point in getting into the meat of those reports.

We have to determine here, as a committee, what our line of business is going to be for the next three weeks. If we cannot deal with one of those items, the Ontario Human Rights Commission, in the allotted time we have now, other than to try to get the approvals and the necessary commitments from the House leaders and the Board of Internal Economy, then there is nothing we can do except carry on with our previous agenda.

Mr Breaugh: I must confess that the committee has its agenda set for the summer period and we have the work allocated that will take us through to the end of August. For myself, I am quite prepared to set aside things that the committee had planned to do to accommodate anybody.

I must tell you that in my conversations with my own House leader and the whip, I indicated that the committee had already set its agenda. They said: "Basically, what we are anticipating the committee would do is that it would take some time at the beginning and get ready to deal with the inquiry into the human rights commission. In other words, you would set up an agenda, what kind of staff you would need, what kind of budget you would need and when you would have hearings, how you would go about the process of giving notice

to the public with sufficient time so they could gather up their resources and get their presentations put together and make arrangements to appear."

I must admit I was left with the impression before we began that what we would be doing with this inquiry at this stage would be simply those matters. It would take us two or three days of organizational work to get ready for a set of hearings that in my view—I was told there was perhaps some possibility of the last week in September or one other week being added, that if the committee in its deliberations ran over into the beginning of the new session, some accommodation could be found then. That was my original premise.

It is true that all of us will have to juggle schedules now no matter what we do. It would be unusual, to be polite about it, to proceed with an inquiry of this kind when one of the parties has indicated fairly clearly that its critic, in other words its lead person, is not available, much the same as I think the government would be a little taken aback if a committee of the Legislature said: "We do not care that the minister has other commitments and that the parliamentary assistant cannot be here. We are going to proceed to do your legislation anyway." I could imagine what Mrs. Marland would have to say if this committee decided, "Notwithstanding any other commitments you might have, we are going to proceed with this thing in your absence." I think all of us understand that we try to accommodate everybody else's schedule. It is not always possible to do that.

1340

All of that being said, I really do not have a big problem with having people come in to provide us with some background information on Coopers and Lybrand or the other report that has been done. But if I were a member of a minority community in this city or any other part of Ontario and you were going to begin this process by having briefings and hearings kind of on the guts and framework of this inquiry, at a time when I had not been given much notice and when I probably had planned to take my family for a vacation this year in the last week of August, I think I might suspect that this committee is not really starting this thing off on the right foot.

It is true that if we wanted to start this inquiry tonight, we could do that. We could probably have it all over with by Monday morning, but that is not the purpose of this exercise; this is not a private exercise for the benefit of this committee. It is a public exercise, which is the purpose of sending this motion to the committee.

On balance, somebody has to convince me then that we should set aside the business we have already scheduled for the latter part of August to deal with this. I am willing to be convinced on that. Then all I have to do is convince my critic that the Legislature does not think enough of his work to provide him with the opportunity to participate. I have some problems with what has been proposed.

Mrs Marland: Mr Chairman, would you accept a motion?

The Chairman: I am open to any motion that anybody wants to put before this committee. However, I think I would like to say that I had indicated to the subcommittee this morning that we are going to do this motion that has been referred to us right, and we are going to have our house in order, so to speak, to deal with the reports and then with the public hearings and the Ontario Human Rights Commission in the proper manner.

I think this will end up perhaps as a consensus by the majority, and what I am getting here now is that we ask for the first week of October. I am also getting the fact that we should not be starting in August; we should continue with our agenda as proposed. What Mr Breaugh says is right; we should get our house in order, get prepared and ask for our funds, the legal counsel and the first week of October.

Mrs Marland: Are you saying that you will accept a motion?

The Chairman: Yes. I do not know what the motion is.

Mr Philip: Is the report of the subcommittee not before the committee at the moment? If that is the case, you cannot have two motions on the floor at the same time.

The Chairman: We have not really determined the full report of the subcommittee. If we have, then I would like to know what that full report is because, as I have just said, we never really set the first week of October. There was open discussion this morning where it was never concluded what the full report was. So I thought we would leave it until now.

Mr Philip: I have a motion.

I would move the report of the subcommittee—I understand it is from the majority of the members of the subcommittee at least—that (1) the original subcommittee report dealing with the agenda be adopted; (2) legal counsel be hired for the amount that has been suggested by the chairman, of \$1,000 per day, or \$15,000 in total; and (3) the committee express concern that, because of the fact that we cannot get legal counsel before 21 August because legal counsel will need some preparation and because there is a conflict with certain groups that will want to be involved with their interest in what is taking place in another committee, the House leaders be asked to give permission for the committee to sit on 2 October; and that there be advertising. That is another matter we discussed.

The Chairman: Okay. That is the motion of the subcommittee that is on the floor. Any discussion on that motion?

Mrs Marland: Let's be very clear. That is not a motion of the subcommittee; that is a summary of one member of the subcommittee.

Mr J. B. Nixon: I will second it, if it helps.

Mrs Marland: That is fine. I know you will.

Based on my experience, if the subcommittee does not reach an agreement, the matter comes to the committee. I took notes this morning about what it was we were starting to agree on. We agreed on the outside counsel, which you said, Mr Philip; we agreed on getting the Board of Internal Economy to approve those fees; and we also talked about requesting the House leaders to approve the last week of September and the first week of October.

Mr J. B. Nixon: No.

Mrs Marland: We did not?

Mr Philip: The last week in September was disagreed with by both Mr Nixon and myself.

Mrs Marland: The last week of September was not disagreed to.

The Chairman: I do not think it matters whether it was agreed to or whether it was not agreed to, I think the point now is that there is a motion on the floor—

Mrs Marland: Yes, but on a point of order, Mr Chairman: It does matter, because what is going to happen here is that a motion is being placed from the committee and I thought that the subcommittee adjourned this morning without any motion being agreed to. I am quite happy for them to go back over the things they were narrowing it down to, but now we are adding some other things as well and I think that is totally unfair, apart from the fact—I do not care that I do not agree with it, but I think the process here is unfair, because what Mr Philip is going to do, as he already identified this morning, is that his motion is now going to be accepted as a report from the subcommittee, which it is not, and then my motion is not going to be accepted because it is going to be a different time agenda. That is why I asked you if you would accept a motion.

I think we have to be very clear. If all this is about—not totally what it is all about, but if part of it is all about what Mr Philip has identified himself—his personal agenda with other committees as the critic for the Ministry of Citizenship, then frankly I think we are going to say to the human rights groups out there that it is okay for the business of the Legislature to be ordered around the fact that we have conflicting responsibilities. It so happens that once the House comes back, I have conflicting responsibilities. I happen to be critic for Citizenship for our party.

If we are saying that it is okay to put off this interministerial report that sits today as a seething indictment of the hiring practices that existed at the Ontario Human Rights Commission and start it the first week of October, and then we are going to have a week or two weeks or eight days or something that somebody else is not available, if we are saying that it is okay and we will deal with it when the House comes back, if that is what we are saying, let's be very clear.

In my opinion, this report as it stands would actually provide the basis and enough evidence to support a human rights complaint, because it identifies the exclusion of qualified visible minorities without any explanation. If we are saying it is okay for that to sit there for five months, let's understand that is what we are saying.

1350

Mr Philip: Mr Chairman, on a point of order: That has not been the issue. The primary argument was one of sensitivity to the groups that are interested in this issue. Mrs Marland is either a very slow learner or a very poor listener if she is trying to say that the whole issue is whether or not I can be on this committee because I have responsibilities on another committee.

What we have is that the member of her party agreed to an agenda. He was part of that subcommittee. If the Conservatives cannot get their act together and cannot agree among themselves, then I do not think that the time of this committee should be wasted while Mrs Marland tries to do some kind of grandstanding, saying that there is some kind of delay. There is no attempt to delay by either the Liberals or the New Democrats on this. What we are arguing is that there are people out there who have felt that there were problems with the Human Rights Commission under the previous Conservative government, but

the Conservatives did nothing.

Mrs Marland: Is this a point of order?

Mr Philip: And now finally that somebody is trying to do something, she wants to have it solved in a manner of one month. I say to her then that she should have more sensitivity to the people out there who are the clients of the Human Rights Commission and who want to have some say on this.

Mrs Marland: Do I have the floor?

The Chairman: Order.

Mrs Marland: May I continue?

The Chairman: Mr Velshi is next on the list.

Mrs Marland: No, excuse me. It was a point of order while I was speaking. If I may just finish?

The Chairman: I thought you were finished.

Mrs Marland: No; I was interrupted. I want to be very clear. I am the last person who is suggesting that this matter can be dispensed with in a month. I sat here yesterday and said that I was concerned that we were talking about doing other business other than this important matter in the four weeks that have been assigned to this committee. I am not suggesting that this can be dealt with in a month. I am not going to reduce myself to personal attacks, so I am not going to make any—

Mr Philip: What do you think you have done earlier if it was not a personal attack?

The Chairman: Order.

Mrs Marland: I too, have spoken, as recently as one hour ago, to several representatives of the visible minority groups: the people who are impacted by the fact that the Ontario Human Rights Commission today is operating in a vacuum. The people who have been asking, for a long time, for this matter to be open to the public are saying to me, in fact, that they do not just have one representative who can monitor one committee as has been suggested, because it is quite true the Police Act—

Mr Philip: On a point of order: That was never suggested by any member of this committee.

The Chairman: You are out of order.

Mr Philip: The member is either being mischievous then and misquoting members or is trying to mislead the members of this committee and the members of the television public who are watching.

Mr Runciman: On a point of order: The member just suggested that my colleague was misleading this committee. I think that is inappropriate language and I would suggest that you advise the member to withdraw it.

The Chairman: I would suspect that the member would, out of courtesy, withdraw his remarks.

Mr Philip: I withdraw the remarks.

Mrs Marland: It has been suggested that because the Police Act is coming before another committee, which is also a very important matter to the visible minorities in this province, they would wish to attend those hearings, and I completely concur.

My conversation with the leaders of some of these visible minority groups is that they will be able to cover more than one hearing because there is more than one person who is in the capacity to effectively monitor what is said at those hearings. In fact, there are many members who are representatives of the visible minorities who can very ably make presentations to any of the committees that are ongoing. Some of them have told me, in fact, that they prefer to have the hearings at least get started. The last week of August is, for some of them, a vacation time and they have more time available during the day when they might attend a public meeting. Most important of all, they want to be sure that this process of looking at the Ontario Human Rights Commission, which is not only the rights of the visible minorities, but the rights of women, of children, of the disabled, of every one of us--

The Chairman: Mrs Marland, I wish you would stop there. We are dealing with our agenda and if we want to get in to all the details and facts of what the reports are talking about, I do not want to do that at the present time. I want to deal with setting our agenda. I have consensus, or what I am gathering is, on what the agenda should be. I know where you are coming from. You do not agree with that point of view. That is fine; that is your prerogative. I would like to get on with the agenda so that we can perhaps get a motion. I have two people yet. After that, I hope that we can deal with it.

Mr Velshi: I am concerned about statements made by Mr Philip and Mrs Marland on the question of them having spoken to other groups already. We are locking ourselves into a situation where it seems obvious that other groups have been invited to come here already to make presentations. I thought we had discussed that we would be deciding later on how we are going to go about that.

Mr Philip: Mr Velshi, that is not what I said.

Mr Velshi: I misunderstood then.

Mr Philip: What we agreed was that we would not choose specific witnesses at this point in time. All I said was that I had some members of visible minority groups expressing concern that the standing committee on administration of justice was meeting in August when they were having trouble organizing as voluntary organizations. If we meet in August as well, we will have two committees meeting on matters that are of concern to them.

I did not say that I was inviting any particular group, although I have that right to do so if I wish to call up some group and say, "Would you like to appear? Contact the clerk and express your intention." What we did agree is that there would not be individual members. We would not come up with a shopping list at this point in time until we heard from the people who are the authors of the internal board.

The Chairman: Thank you. I think you have explained that very well.

Mrs Marland: Excuse me, may I give the same clarification as my colleague gave.

The Chairman: I think Mr Velshi has the floor. Let's continue on.

Mrs Marland: No, excuse me. Mr Chairman you have just allowed Mr Philip to clarify what he said to Mr Velshi. I am sure that you would allow me the same privilege.

The Chairman: Yes.

Mrs Marland: I would tell Mr Velshi that when I said I had spoken to representatives of groups, they are not groups that wish to make a presentation. They just wish to be able to be available when the public hearings are going on and I have not invited any groups or individuals to come forth.

Mr Velshi: The other thing Mrs Marland had mentioned yesterday and today was that the Human Rights Commission is working in a vacuum right now; the morale is still low. My understanding is that is not so. The day to day work of the Human Rights Commission is proceeding. This is what I know—what she says, she knows. I am not too sure that I appreciate the type of pressure that is coming on us, that we have to do something because things are falling apart at the Human Rights Commission.

The Chairman: The people in this committee are entitled to their opinions.

Mr Velshi: Right, but the point is that it is on record that things are falling apart and I would like to place on record that things are not falling apart. Things are happening as they normally should be.

Mr J. B. Nixon: Mr Chairman, at the beginning of this meeting you delivered a report of the subcommittee to the full committee. I concurred with just about everything you said. Mr Philip then moved a motion which essentially reiterated, by way of motion, everything you had said, but it went one step further in terms of discussion about use of the third week in August. Between you and Mr Philip there is complete consensus but for the issue of the third week in August. Between Mr Philip and I, as members of the subcommittee, there is consensus on how we use that third week in August.

The only person on the subcommittee who has questions about how we use the third week in August is Mrs Marland. Frankly, we have got a lot of consensus here. We have got disagreement on how we use—I am sorry—the fourth week in August, but you do have two of three members of the subcommittee urging that whatever is dealt with be dealt with at a time when all three parties are available; when all interested communities are available to sit, monitor and listen; and when the committee can function effectively because it has a logical presentation of the materials to it, and we do not deal with it in a scattered, rushed fashion to get it over with and cover it up for some reason.

I do not know why we want to rush into it in the third week in August. Mr Velshi tells us the commission is not falling apart. I know the commission is not falling apart. These are serious matters that have to be dealt with with patience, thought and hard work. I know my words will probably fall on deaf ears, but I urge Mrs Marland to consider that those are more important values that we should have when we approach our work than rushing this agenda for some other motive, which I will leave unexplained.

The Chairman: Okay, I take it from here. We have had a great

discussion. Mr Philip wants to make a motion, although it is not clear whether it is a subcommittee motion or a motion in this committee, and I do not care what it is—the majority is going to rule. The motion before us is seconded, I understand, by Mr Nixon.

1400

Mrs Marland: Could we have the motion written, please?

The Chairman: If Mr Philip would not mind reading his resolution again, we will—it will be in Hansard but—

Mr Breaugh: Could I assist you? I think there might be some use in dividing the question here. As I sense, there is consensus on some things and not on others.

Would it be reasonable to proceed in this manner, since I have heard it from a subcommittee and from Mr Philip? The first recommendation would be this: that a budget be struck in the order of \$15,000 for legislative counsel and forwarded to the Board of Internal Economy. That is the first recommendation. Are we agreed on that?

The Chairman: Is that agreeable to the committee?

Agreed to.

Mr Breaugh: I heard a recommendation in two parts now that there also be a budget struck and forwarded to the board on advertising. I did not hear a number, but I think something in the order of \$15,000 would be appropriate. I would be open to an amendment on the amount, but I heard the consensus that there be a budget struck for legislative counsel and for advertising.

Mrs Marland: We have not discussed advertising yet.

Mr Breaugh: We did yesterday in the full committee.

Mr Philip: That was part of the original subcommittee report.

Mrs Marland: I thought that in advertising we were going to decide whether we were going to—

Mr Breaugh: I am not talking about placing the ads, where they go or how much, but that a budget be struck. Are you opposed to that?

Mrs Marland: No, that is fine.

The Chairman: In case we need it.

Mr Breaugh: Okay. The second recommendation would be that a budget be struck for advertising and forwarded to the Board of Internal Economy.

The Chairman: Is that agreeable to the committee?

Agreed to.

Mr Breaugh: I heard consensus that there was agreement to ask permission to sit in the first week of October. That will leave an opening if

you want to put something else in there, but I heard agreement that a request be forwarded the government House leader to ask for additional sitting time in the first week of October. Is there a consensus there?

The Chairman: Is there a consensus?

Mrs Marland: Agreed to sitting the first week of October?

Mr Breaugh: Yes.

The Chairman: Agreed?

Mrs Marland: As long as it is "not only."

The Chairman: Agreed.

Mr Breaugh: Now, if there is anybody else who wants to put another motion about when we sit, he or she should do so now.

The Chairman: That is right.

Mrs Marland: I will place that motion.

The Chairman: Mrs Marland moves that we sit the last week of August, which is the week beginning 28 August, and that we deal with the Coopers and Lybrand report and the interministerial report authored by Amin and Gordon on the Ontario Human Rights Commission.

Mrs Marland: I do not have a date on the Coopers and Lybrand report, but I assume there is only one report.

The Chairman: Okay, that is fine. We have—

Mrs Marland: Excuse me.

The Chairman: The clerk is ready and we have to make sure that we get this properly.

Mrs Marland: Okay. I think I have identified those two reports clearly.

Mr Breaugh: Except I would like to make a friendly amendment. We should recognize that we are being asked to set aside the scheduled business of the committee in that week to deal with these matters.

Mrs Marland: Just to respond to that, and obviously this is not part of the motion, there has been some suggestion that the Conservative Party agreed to the other scheduled business of the committee.

Mr Breaugh: You did when I was with you in full committee in the spring session, but that does not necessarily mean anything.

Mrs Marland: That is true. In the spring session, there were matters before this committee that were agreed to be dealt with during the summer session. However, that was before the resolution of the government House leader referring the Ontario Human Rights Commission to this committee.

The Chairman: Therefore, you move a motion that this committee sit

on the last week of August to deal with these two reports.

Mrs Marland: And the last week of September. What I am suggesting is that we deal with those two reports the last week of August, and that the last week of September and the first week of October, which we have already agreed to, be two weeks when we would deal with the names of people we are going to invite to come before the committee.

The Chairman: Thank you. We will now vote on that motion by Mrs Marland.

All in favour of Mrs Marland's motion? Opposed?

Motion negatived.

Mrs Marland: Can I place another motion?

The Chairman: Yes.

Mrs Marland: Just so I am clear, at the moment we have only one week set aside to deal with the Ontario Human Rights Commission.

The Chairman: No, we do not have any set aside. We are requesting a week, the first week in October.

Mrs Marland: Then right now are we requesting one week, that being the first week of October, to deal with the Ontario Human Rights Commission?

The Chairman: That is my understanding.

Mrs Marland: Can I ask another question for information? Is it accurate that there is a suggestion or a policy—I do not know where it is with the government—that in the new session we will not have a standing committee on government agencies, but that this will be the estimates committee?

The Chairman: According to the rules that were passed, as of 9 October there will be rule changes. However, I anticipate that after we find out if the Board of Internal Economy approves some of the requests that we are asking for, possibly we will request that we continue as a committee to complete the hearings on the Human Rights Commission, or ask which committee would deal with it.

Mr J. B. Nixon: May I make a comment that may or may not help Mrs Marland, and probably will not, but the rules were not imposed by the government. They were worked out between the House leaders of the three parties. Not everyone is satisfied with the rules because they are a compromise, and that is the nature of compromise. I just wanted to set the record clear.

Having said that, I have already spoken to our House leader's office and urged him to consider this committee's request for additional time. I will do the same in October when the name of this committee changes and it has a different format. I will urge him to consider that we be allowed to continue sitting as the standing committee on government agencies to fully deal with this matter.

I urge you to make the same phone call. I urge Mr Philip to make the

same phone call. We are not masters of our own fate, but we can influence it. The suggestion that everything that does not go your way is a unilateral action of the government imposing some fiat on you, I take exception to.

Mr Breagh: I was going to point out that whatever organizational changes or name changes might take place in the fall session, there is still a motion which has been placed by the then government House leader, and I believe it was approved unanimously by the entire Legislature, striking a committee to do this inquiry, setting out terms of reference for it and giving it some rather unusual powers.

I do not think it is anyone's intention to disintegrate that motion by virtue of disintegrating the committee. That cannot be done. So whatever might be done in terms of reorganizing the committee, the last fear that I have in the world is that anybody around here is going to be stupid enough to ignore totally one of the few motions that passes unanimously that was put together with such pain on the way through. Even the government is not that stupid; we at least understand that much about it.

To be serious for a moment, I do not believe that whatever rumour and gossip might be circulating about name changes and constitution of the committee, that is not a problem. In my view the Legislature has spoken, it has struck a committee to do this inquiry, and that will happen.

The Chairman: I think we have pretty well concluded most of our observations.

Mrs Marland: This resolution of the government House leader, I agree does not have any time limitation or time frame. Does someone in the room have a calendar? We voted against asking for the last week of September because of the preference of the critic for—

The Chairman: Because the majority ruled the other way.

Mrs Marland: In fairness, the critic for the New Democratic Party has said a number of times that his preference was the first week in October.

Mr Breagh: I think it is the inadequacy of your arguments that caused the motion to fail.

1410

The Chairman: Okay. Can we move on to the next?

Mr Runciman: I have been privy to all of these conversations, but I have to wonder, sitting here in the last couple of days in hearing the debate and the fact that there was obviously some significance attached to the resolution that was passed unanimously in the House and the fact that what you are suggesting here today, I guess by way of Mr Breagh's resolution, is that we are going to have one week, hopefully 1 October, to deal with this matter and then subsequent to that we are going to be dealing with it, when the House is sitting, during our weekly sessions, which run about two to two and a half hours.

The Chairman: Or it could be during the next recess where we could spend a month continuously.

Mr Runciman: You are talking about the end of 1990.

The Chairman: It could be.

Mr Runciman: I guess I have some problems with that at first blush in the sense that I would think that certainly when this matter was dealt with by the House leaders and by the Legislature as a whole, most people participating in those decisions felt there was more urgency to dealing with the matter than to see it delayed until 1990.

It strikes me that it is an eminently reasonable request, perhaps if we are going to be going to the House leaders for additional sitting time, that we should at the very least be looking for an additional week. So we still may not be able to resolve this to everyone's satisfaction, but at least we will have the additional time to deal with it and then we see where we have to go from there. But I think one week's sitting time to deal with a matter that was considered to be a very important one does not seem to me to be appropriate at all.

The Chairman: That is fine. We have dealt with the matter. We have voted on it and I do not see any need in carrying on further with the conversation further with regards to it.

Mrs Marland: I have a motion. I am reading from 16 May 1989 Hansard. The Honourable Mr Phillips, who was the Minister of Citizenship, said: "I am actually in favour of a full public hearing. I think it is extremely important that the commission appear before a legislative committee.... I think the second thing is, I am anxious that there be a thorough look at the specific allegations, that that be done as quickly and that the results of that study be a matter of public record."

I do not think that having this process delayed another five months is what the former Minister of Citizenship wanted. It is not what I wanted as the critic for Citizenship for the Progressive Conservative Party. Obviously the consensus on the committee does not agree with me. I have to accept that as the democratic process. I will place a motion that the committee not conduct public hearings between 16 October and 25 October, which is six sitting days after the House comes back.

The Chairman: I would think that the committee should deal with that at the appropriate time. I am not so sure that we should now be talking about the committee when we are not sure in what direction the committee is going to be going after the Legislature comes back. I do not think we can deal with that at this time.

Mrs Marland: All right.

Mr Velshi: May I ask one question, please, of Mrs Marland? Why are you saying we should not meet? Is there any particular reason we should not meet at that time? Is there a personal reason that you may be aware of?

Mrs Marland: If I am still critic for Citizenship, there may be a very serious personal reason.

Mr Velshi: It is important for us to know.

Mr J. B. Nixon: In other words, you probably cannot be here. That is all.

Mrs Marland: I do not know that.

Mr J. B. Nixon: Okay. But there is a possibility.

Mr Velshi: That is fine.

The Chairman: I think we could deal with that at a future date. I would like to go on now with the agenda that we are going to deal with over the next three weeks. I would like to deal with our agenda for tomorrow. In one of the briefing papers that we had, we were dealing with the French Language Services Commission and the Rent Review Hearings Board: finalizing those two reports. Is that satisfactory?

For next week, the week of 14 August, could the clerk or our researcher bring us up to date with regard to the agencies that have been contacted that are available for next week? Is the psychiatric facilities review board ready to deal with?

Mr McNaught: The research staff is ready to go on the psychiatric facilities review boards and the Ontario Environmental Assessment Advisory Committee for next week.

The Chairman: I think then probably what we should do is tomorrow morning bring us a report on the ones that are ready and the ones that you anticipate we could deal with next week. We will deal with it at that time, when we are finishing the review on the Rent Review Hearings Board and the French Language Services Commission.

Anything further in the committee? If there is not, we shall adjourn until tomorrow morning at 10 am.

The committee adjourned at 1415.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

RENT REVIEW HEARINGS BOARD
ONTARIO FRENCH LANGUAGE SERVICES COMMISSION
ORGANIZATION

THURSDAY 10 AUGUST 1989

STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Faubert, Frank (Scarborough-Ellesmere L) for Miss Roberts

LeBourdais, Linda (Etobicoke West L) for Mr Ballinger

Clerk: Brown, Harold

Clerk pro tem: Manikel, Tannis

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday 10 August 1989

The committee met at 1008 in room 151.

AGENCY REVIEW: RENT REVIEW HEARINGS BOARD
(continued)

The Chairman: We will call the meeting to order. If we have your attention, this is the standing committee on government agencies dealing with agencies, boards and commissions. Today our agenda is the final review of the Rent Review Hearings Board, which we had done an investigation on, and also the Ontario French Language Services Commission, and we hope we will be able to deal with our supplementary budget with regard to what is going before the Board of Internal Economy, as I requested.

You all have a copy of the report on the agency, which we reviewed. Our clerk and Jerry Richmond met with the people from the rent review agency to go over the report. I understand that the recommendations that are contained on pages 11 to 15, I believe it is, are the recommendations we are making. I wonder if any members have any comments. Apparently they have been agreed to by the ministry staff, and I understand that what we were trying to do was make it the process that if the hearings board felt there should have been some changes made, it would have the opportunity to do it. That is in there and I would think that would be satisfactory. However, does anybody have any comments?

Mr Breaugh: I do not have a great problem with the draft as it is now put, but there are a couple of difficulties I would like us to talk about a little bit. I want to start by saying I do not have a problem with the draft report, but there is a thing that I struggled with a bit as I read what I take now as the final version. That has to do with the provision of information by the board on what it has done, and particularly a fairly substantial amount of statistics that have been provided by the board.

I have no difficulty with including them in the report, particularly since I thought there was a fairly meticulous attempt to kind of document what was the source of the information, but I want to point out to people that we do not have any way to cross-check that. I guess because it is a new agency there has not really been much of an opportunity to put in place normal auditing functions and the cross-checking of how accurate and up to date these numbers really are. I would like to entertain a little bit of discussion as to whether therefore we should include this analysis of what the board has been doing in our report.

I am just trying to put to you the quandary I am caught in. I have no way of challenging, for example, the numbers that have been brought forward by the board for its purposes. I take it at face value that they believe this is an accurate portrayal of their activities, but we have no way of counterchecking that. We have no audit that has been done.

We do have one small phrase that I will point out to you on page 11 where we indicate, "The board is...subject to audit by the operations review

and audit branch of the Ministry of Housing, although there is no indication that the board has been subject to such a review."

If you read all the fine print, I think we have provided the outs you would normally want to put in here. It is just that I wonder if the feeling is shared by other members of the committee that perhaps we ought not to be including this analysis of their activities when it is really a rather unaudited version of it.

Mr J. B. Nixon: I understand what Mr Breaugh is saying. I do not feel strongly either way, but I would say to you that the information provided in the tables by the board is in my view relatively straightforward information. It is sort of the type of thing where someone ticks off a number in a ledger every time there is a hearing and you keep adding up the number of hearings that take place in each region. It is fairly straightforward and easy to do. It is always susceptible to human error none the less. It is really not information that has been processed by some sort of formula or analysis; it is just a list of how many hearings occurred, where they occurred; the number of members who sat on the hearings and so on. I agree with you none the less, though, that it has not been subject to audit.

I think it is valuable for the public to have this information to know about the level of activity that is taking place. Maybe we should just emphasize that there has not been an internal audit by the audit branch of the Ministry of Housing, so the information is unaudited, but I suggest it is probably the type of information we can assume is correct, to the extent you can ever assume this type of information is correct.

Mr Breaugh: Okay. I do not want to pursue this too much, but maybe I can help by giving you a couple of examples of my concerns. It is noted, and I give everybody due credit for that—for example, on page 18 the note reads, "For the purpose of this analysis, hearings held by a three member panel have been counted as three hearings." The fine print is there. The question is, the next time somebody uses that, will he include the fine print? I kind of doubt it.

The other thing is that perhaps it is just in my copy of it, but there persist notes that refer to the ageing of hearings. I know what the ageing of fine wine means. I know what the ageing of meat means. I do not know what the ageing of hearings means. Do they get better the more they are delayed?

Mr J. B. Nixon: No, it gets worse.

Mr Breaugh: Or do they get worse? Some of the information here appears to me to be a little nonsensical.

Mrs Marland: I know Jerry Richmond is not here this morning, but can someone tell me—maybe Mr Breaugh since he is the Housing critic for his caucus—are these recommendations doing anything to get to the root problem of how long this process of rent review takes in the province?

Mr J. B. Nixon: Can I respond to that? Maybe Mr Breaugh wants to say something too, but the backlog problem is in the original application process where the application is made to the ministry and the rent review branch deals with the application at the outset. That is where the big backlog exists. There is a backlog at the hearings board level, but that is not the significant backlog that concerns us.

As we were charged to look at the hearings board rather than the rent review branch of the ministry, I think it would be unfair to the board and you may be letting the ministry off a little easy by saying there is a serious problem here, without indicating how serious it is compared to the backlog problem at the ministry.

Mr Breaugh: I would concur that this looks bad, but in comparison to the actual original legislation where the huge backlog is, this looks like nothing. This is just kind of the small wart on the rear end of the process. It is the major process itself that has huge flaws in it and this little review process at the end of it is never going to reflect accurately what the real problem is. The real problem is the huge set of numbers, I think still well over 20,000 cases, that have to be heard.

Mr J. B. Nixon: No, it is less than 13,000.

Mr Breaugh: Oh, only 13,000.

Mr J. B. Nixon: Less than 13,000.

Mr Breaugh: There is a comfort to the people of Ontario that there are only 13,000—

Mr J. B. Nixon: Down from 26,000 to 13,000.

Mr Breaugh: —down from 26,000.

Mr J. B. Nixon: Through diligent, hard work. In a few months, we will have it down even further.

Mr Breaugh: The main process stinks. This is just the small fume that lingers around the edge of it.

The Chairman: Do you have anything further, Mrs Marland?

Mrs Marland: That was probably the answer I anticipated from both members. What I am wondering is that when this committee decided to look at the Rent Review Hearings Board, we probably made that decision hoping we would be able to supply some remedy to the problem that has just again been mentioned, which is the 13,000 cases that are awaiting hearing. Does the committee feel that these recommendations are the strongest remedy we can give to just that end portion, recognizing from what Mr Nixon has said that the major problem is not at this end of the process, that it is in the ministry and the areas he described in his comments?

When people wait for these rent review hearings, it is very unjust on both sides of the issue. Certainly, if it is a legitimate increase it is unjust for the landlord, but it also ends up being unjust for the tenants who are so intimidated today because of the shortage of rental accommodation that although they legally do not have to pay those increases, a lot of people pay them.

It is my experience that a lot of people, no matter how many times I say to them, "You don't have to pay the increase until it's been approved," are so nervous of losing their apartments and their rental accommodation, because they have nowhere else to go. It means that once they think they might put their leases in jeopardy, they start paying the increases. If it takes the inordinate amount of time it has been taking for these hearings to come before

the Rent Review Hearings Board, I am just wondering what Mr Nixon is telling us. I am asking this because I do not know the answer. Are you saying that once it gets to the point where it goes before a rent review board, there is not a substantial delay and the panel members are available to set the hearings fairly quickly when the rest of the process has taken place?

1020

The Chairman: Mr Nixon is not a witness here today. He has his own input. I would like to say a few words at this time.

We are reviewing the operations of the Rent Review Hearings Board. A report has been here indicating the amount of staff that has been there, that has been hired and the number of reductions in the applications that have been made, and we have before us some suggestions of how we think the board can probably operate in a more efficient manner.

I would think we should be dealing with these recommendations, either accepting or amending them. I must remind you that we had looked at them. Since then our researcher has spoken with the chairman and the vice-chairman of the board and they concur that these recommendations would help them in order to proceed with better rent review hearings. So I suggest we get on with the recommendations.

Mr Velshi: I am looking at page 13, recommendations 1 and 2. I am a bit concerned. I am not too sure that we discussed the last line of recommendation 1: "Such reports, after being received by the minister, should be tabled in the Legislature." I am not so sure if we are just muddying the waters here or what by doing that. It is a ministerial decision. For instance, if you brought cases with suggestions and recommendations before the minister, I see no reason why that should be tabled in the Legislature, whereas a committee can always discuss what is going on.

The Chairman: I wonder if it would be appropriate to read the first recommendation into the record and then we will discuss it.

It says: "In the interest of better serving landlords and tenants in Ontario, the Rent Review Hearings Board, through the chairman should, on a regular basis, report suggestions or identify concerns to the Minister of Housing respecting legislation, procedures or other matters which could improve the rent review appeal process or rent review in general. Such reports, after being received by the minister, should be tabled in the Legislature."

The second recommendation is: "The annual report of the Rent Review Hearings Board should contain a section which identifies significant administrative/legislative or other concerns or issues which may have an impact on the board's effectiveness or the rent review system. Suggestions may also be made as to how these matters might be resolved."

Really, what I think we are doing is saying, "Yes, the chairman of the board can go to the minister and make recommendations, which was not the case before."

Mr Miller: Were they not reluctant to make recommendations because they felt that maybe it was a little beyond their responsibilities? That is

the feeling I received and I think the recommendations here encourage them to do just that, so it makes it more effective on behalf of the people of Ontario.

The Chairman: That is what we have done.

Mr Velshi: I am not objecting to the first part of the recommendation; it to the last part, which says it "should be tabled in the Legislature." We are empowering the rent review board to make suggestions to the minister and I think we should stop at that point. As an agency committee we then have an obligation, if we ever want, to go into what is going on. We can check on that, but I am not so sure that a rent review board's responsibility lies as much with the Legislature as with the minister.

The Chairman: I think the reason we wanted that in there was so that the public would know what the minister's recommendations are. That was the reason we wanted that in there.

Mr J. B. Nixon: Can I make a suggestion? It is my understanding that the annual report of the board has to be tabled in the Legislature now. What we are saying in recommendation 2 is that in that annual report the board spend some time identifying significant administrative and legislative or other concerns or issues that affect it.

Can we not merge recommendations 1 and 2? Effectively, recommendation 2 covers off recommendation 1, because recommendation 1 says they should table in the Legislature advice or suggestions identifying administrative and legislative concerns of the board. Then we say that not only should they table it in the Legislature, they should put it in the annual report which is to be tabled in the Legislature.

That to me just seems like a duplication of everyone's efforts and time. If we merge 1 and 2 and say they should make this identification of significant legislative and administrative concerns in their annual report which shall be tabled in the Legislature, we might be better off.

The Chairman: I think that the key to recommendation 1 is that they identify concerns to the minister by the board.

Mr J. B. Nixon: But that is not the same thing as tabling in the Legislature.

The Chairman: Yes. It is separate.

Mr Breaugh: I do not want to be sticky about this; I, at least, am trying to be as gentle as I can with this process. But to set up an arm's-length agency such as this board and to say it cannot report to the assembly itself is really quite wrong, and I do not think anybody intends to say that. I am quite prepared to live with these two recommendations as is, which simply say that on the occasion when they have a suggestion or a concern they have a right to report to the minister and to the assembly.

The point is that it is a matter of public knowledge: this is supposed to be an arm's-length agency which hears appeals on the rent review process. I believe it is important because I sensed, when they were before us, that they were a little—I do not want to say confused—concerned about their relationship to the ministry.

The purpose of the exercise is to take an agency like this and make it

at arm's length to the ministry itself. This is, after all, the appeal process at work here. So it is kind of quasi-judicial in nature.

All we are saying is that they have two occasions when, if they have identified something that is wrong in the process, they can report that, so to speak, to the minister and to the assembly. The annual report is one obvious one, but then, again, that is something which is done on an annual basis. Most of them wait. It is a rather formal procedure that they go through. It is not a very controversial process either and it is not designed to be.

We have said there are two occasions when they can report their concerns. They can do it in their annual report, which would be a little unusual, or, if they see something that they would like to do that they think is wrong that would improve the process and make it better, they should feel free to report that to the minister and table a copy of that in the Legislature and then we will all have that information. They are not blowing the whistle on anybody. They are making what we hope will be constructive suggestions on how to make the process work better, and that is all it is.

Mr Velshi: To clarify my position: I am not objecting to anything coming to the Legislature. What I am suggesting is that if the rent review board wants to make a suggestion every week to the minister to better the situation, are we going to be receiving a report in the Legislature every week?

I think what Mr Nixon suggested was to let it all be condensed in an annual report rather than coming once a month or whatever. Perhaps we could say that if the board requires it to be received by the Legislature, it may do so.

Mr Breaugh: Excuse me, but this has nothing to do with whether the minister is happy or whether the board is happy. This has to do with a matter of public information. We have the right to know what this board is reporting. It is not part of the ministry. It is supposed to be a quasi-judicial body.

This is stretching the point a bit, but to make a point, it would be like saying that the judges of Ontario have only the right to report in confidence to the Attorney General something they think is wrong with the court system. They have a number of vehicles at their disposal to report something that they think is wrong. Nothing prevents them, of course, from discussing matters with the ministry staff on a day-to-day basis. That is the nature of it.

But if, for example, this agency feels there is something flawed in the legislation, that there is something they want to do and somebody in the ministry has advised them they cannot do that because the law does not allow you to do that, they should be able to report that and they should not have to wait until an annual report to do it. That is all we are saying.

Mr J. B. Nixon: But your analogy is flawed in that the courts do not have the opportunity to make an annual report to the Legislature. There is no reporting to the Legislature by the court system.

Mr Breaugh: Nor should there be. I tried to point that out.

Mr J. B. Nixon: Okay. But if this is a quasi-judicial tribunal, should it be reporting to the Legislature?

Mr Breaugh: Yes.

Mr J. B. Nixon: I think it should, but you cannot make the analogy of the courts. I do not think it is entirely appropriate.

Mr Breaugh: No, I did not try to. I think that is your analogy.

1030

The Chairman: I think we could really do a lot of reviewing here. However, I do know that we accepted these recommendations once. We had them sent through our clerk to the people at the rent review agency for their co-operation, if there should be further amendments to it, and they agreed with them. Really what we are doing today is going over what we have already done and what we are looking for is approval of them.

Mrs LeBourdais: Just one small point in the interest of accuracy, in that you did make the point of reading recommendation 1 into the record. I believe I heard you say, "Such reports, after being reviewed by the ministry" and it does specifically say here "received by the minister." I may have misheard that, but I think there might be a tiny difference.

The Chairman: Okay. Can we then agree on the recommendations on page 13 as acceptable? All agreed? Agreed.

The recommendations on page 14:

"3. The Rent Review Hearings Board and Ministry of Housing should pursue initiatives to ensure that rent review and rent review appeal informational materials and forms are more widely available at appropriate public buildings across Ontario. This could, for example, include municipal offices and public libraries."

Is that agreed to? Agreed.

"4. The Rent Review Hearings Board should continue to actively pursue initiatives, such as workshops for tenants and landlords in communities across Ontario, to explain better the rent review appeal and rent review systems. Printed materials on the rent review appeal process should continue to be ever more widely distributed to interested parties in Ontario."

Do we agree with that? Agreed.

"5. The Rent Review Hearings Board should give consideration to developing a procedure, in co-operation with the rent review services branch of the Ministry of Housing, whereby hearing notices are systematically posted or made available in the appropriate rent review services branch local office."

Agree to that one? Agreed.

"6. The Rent Review Hearings Board and Ministry of Housing should, in conjunction with the Legislative Assembly, develop appropriate procedures to ensure that rent review and rent review appeal informational materials and forms are systematically made available to the constituency offices of members of the Ontario Legislature."

Agreed? Agreed.

On page 15, the following recommendations:

"7. To allow for the most efficient and informed disposition of appeals by the Rent Review Hearings Board, the rent review services branch of the Ministry of Housing should systematically make available their complete file(s) to the hearings board in connection with each appeal."

Agreed? Agreed.

"8. The Rent Review Hearings Board should continue to investigate and introduce appropriate automated office procedures such as advanced word processing and programming capabilities to expedite and make more efficient the processing of appeals."

Agreed? Agreed.

"9. To expedite the resolution of appeals the Rent Review Hearings Board should give consideration to teleconferencing or other electronic means of communication to hear appeals or conduct pre-hearing conferences, particularly from more distant or remote parts of the province. The use of electronic communication to hear pre-hearing conferences or appeals should be employed only with the prior consent of the parties to the appeal."

Agreed? Agreed.

Item 10 is the final recommendation:

"10. The Minister of Housing should give consideration to expanding the possible scope of the pre-hearing conference, as provided for under section 104(1) of the Residential Rent Regulation Act, 1986, to include mediation and conciliation. [The committee notes that section 102(1) of the Residential Tenancies Act grants the Residential Tenancy Commission a mediatory role in settling certain matters.]"

Agreed?

Mr J. B. Nixon: Can I make a grammatical suggestion? The last sentence, which is in brackets, should be put in the past tense, because the Residential Tenancy Commission does not exist any more. I think what we are saying is that in the past, the Residential Tenancy Commission, when it existed, performed a mediation and conciliation role. We think it is a good idea that the present hearings board do the same thing.

The Chairman: That is agreed. Okay, all items are agreed to. That concludes our recommendations with regard to the Rent Review Hearings Board.

Mr Breaugh: Just one other small point. I do not want to write any minority reports or anything, but I do think, with the concurrence of the committee, that some of the language that is used in places like on page 12 is really not appropriate for a committee of the Legislature to use in this kind of review.

If we were a totally government committee, we probably would be interested in writing that the committee was very impressed by these presentations. Some of us were, some of us were not. I think, to be fair, the sensible thing to do is not to use that kind of language in the report itself.

There are some words in here. For example, "The committee sincerely believes that the staff responded to the committee's concerns and questions in an extremely sensitive and forthright manner." I believe they did the job, but I am not here to write testimonials for staff, for that board or any other board, and I do not really think it is appropriate to do that.

There is a fair amount of that kind of language used on that page. I could see, if we were writing government brochures on the wonderfulness of David Peterson's government, we would want to use all this language, but I do not believe it is appropriate for a legislative committee to do that.

If I could suggest, and you are free to rewrite it in any way you want, you can either strike the first three paragraphs on page 12 or rewrite them in somewhat more neutral language. You are simply inviting that those of us who do not totally agree with the government's line will write our own editorial version and append it to page 12 and other pages all the way through.

With the concurrence of the committee, I think the simplest thing is to simply strike—there are three paragraphs on page 12 that I found particularly offensive. There are a million and one people who write this kind of stuff for the government; they do not need us to do it.

The Chairman: I think the researcher has noted those comments and he will relay them to Mr Richmond, who did the report.

Mr J. B. Nixon: I do not have an objection; I just want to qualify or comment on what Mr Breaugh said.

First, there is some information in those three paragraphs, which I consider hard information, that I think should stay in. For instance, "The committee understands that until early 1988, the board was largely involved in setting up shop, engaging in training members and staff" and so on and so forth. That is hard information that should stay in.

Second, speaking for the government side, do not forget, we did not write this either.

Mr Breaugh: I did not write it either. If you want me to write my impression of the chairman of the board or how the board functions, I will be happy to do so. I just do not think it is appropriate for us to do that.

Mr J. B. Nixon: I agree, and I am happy to write my impressions.

Mr Velshi: While I am agreeing to go with what Mr Breaugh has said, I must say that I was impressed by the committee just for the sake of the record. If there was a report, it would obviously be a minority report here and not a majority report.

The Chairman: Could I have a motion that the report, as amended, be adopted?

Mr Breaugh: Removing the offensive words that are used overall, I would be happy to move the adoption of the report.

The Chairman: Mr J. B. Nixon moves, seconded by Mr Breaugh, the adoption of the report.

All those in favour? All opposed?

Motion agreed to.

AGENCY REVIEW: ONTARIO FRENCH LANGUAGE SERVICES COMMISSION

The Chairman: The next item of business is the Ontario French Language Services Commission. As you are aware, we had the Ontario French Language Services Commission before us on Wednesday 22 March, in the morning and in the afternoon, to do a review of the operation of that commission, which I understand will be redundant as of 18 November 1989.

We had been waiting for a reply back from them on whether they feel they should continue as a commission or whether it should be redundant as of 18 November, which the legislation states it will be. We have not received any word back from them. My understanding is that it will be a month or two before we get word back. Is that correct?

Mr McNaught: Yes. I spoke with the commission about one week ago. As you remember, the last time we discussed this, they had said they would be having a meeting at the end of July, at which time they would be making recommendations on their own fate, so to speak. Apparently they did not do that, and I was told to call back in a month or two, at which time they might have some more solid recommendations on this. Generally, they have not decided anything yet.

1040

The Chairman: My observation was that there was a lot of discussion that perhaps the board should continue or we should have a language commission of different ethnic groups on a board. There was some discussion on that; however, nothing was actively pursued.

Mr J. B. Nixon: Without going into the merits of any recommendations we may or may not make, I am a little upset if we write a letter to the people at the commission. They know they appeared before us as a committee, they know we are considering these matters, they know there are divergent views. If we write a letter asking for a reply, as a committee, I think we are entitled to a reply. I do not know where we are going to go today on this, but I think we should send back a fairly strong, sharp letter that the request of the committee for their advice is not to be treated in a casual manner. Time waits for no man, and we expect a reply. If it means an extraordinary meeting of the commission to consider it, then so be it.

On the other hand, I think it is important to have their reply. I do not want to proceed in the absence of it, but I am telling you, as an individual member, my patience wears thin when we get that type of response.

Mrs Marland: Because I was not at the recent meetings of this committee due to attending the acid rain meetings of the standing committee on resources development, I am going to ask something that you have probably already discussed. When this matter was before the committee, did you ask the commission to come before the committee, did they appear and then did you ask for its recommendations?

The Chairman: The commission was before us on 27 March, morning and afternoon.

Mrs Marland: Then they were to go away and come back with some recommendations.

The Chairman: I believe we asked them for some input on whether they

should continue as a commission. The legislation, Bill 8, indicates that as of 18 November they are redundant. It completely comes under the Office of Francophone Affairs and the minister. We were saying, "Do you believe that you should continue as a commission or do you believe that your job is done?" They have had meetings and we have not had any answers back. That is what we were looking for.

Mrs Marland: That is November of this year that it becomes redundant.

The Chairman: The commission.

Mrs Marland: The commission, yes. So is it since March? I mean, did we ask for them right away? How long ago did we write and ask them?

Mr J. B. Nixon: I think it was June.

Mrs Marland: I really agree with Mr Nixon's comments. In our caucus, we obviously felt that a select committee should be looking into the status of the implementation of the act. Obviously their input is part of that, and obviously this is the time that is set aside by the Legislature for the committee to do this work. I think a letter should go from the chairman today, and we should ask them for an immediate response so we can deal with it in the time frame that this committee has set aside. This is one of the subjects we want to deal with. Otherwise, November is going to be upon us.

You almost have to wonder whether they think it will go away if they do not do anything with it. Maybe they do not want their term extended, maybe they want it just to be finished in November, but it certainly sounds like a tremendously irresponsible attitude on the part of a commission that was established to implement what has been and is becoming more so, through my office experience, I know, a somewhat controversial act.

The Chairman: Mr Breagh, in his remarks, said to Mr Raymond: "We have quite a challenge in front of us. I think the committee will have a bit of a job trying to assess whether or not the commission should continue, and if so, in what form. I understand you intend to address that at your next meeting." Mr Raymond said, "We will be." Mr Breagh said, "It would be helpful if we had your comments in that regard before we finalize our report." We have not heard back from him.

Mr Breagh: I am a little concerned and a little confused as to what is going on here. I do understand that this is an advisory group which essentially is there to present information and co-ordinate the activities in a number of ministries before the act is in place. I think we should give them that, that their initial job, at least, is done.

I felt that the committee went out of its way to seek their advice on the matter. We set aside the tabling of the report on something that I think we all know is a difficult issue because it is new, because it affects a lot of people across Ontario and because it has to do with languages, which is always a pretty sensitive thing anyway. I am a little concerned that the committee went out of its way to be courteous to the advisory committee, sought its advice and seems now to be spurned.

I cannot really believe that anyone did this intentionally, but even with the best of motives, even if they had no intention to be discourteous to a legislative committee, even if they had no intention to be rude to anybody, it is one heck of a way to proceed in a very sensitive area if they cannot

even provide us with their opinion on a matter over something like, I believe it is now close to four or five months, particularly when they appeared in front of the committee and said, "Oh, yes, if you would just give us another month or so we will deal with that matter and we would be happy to share that with you."

It is not a very good omen for how the French Language Services Act will be implemented if that is the way they respond to the questions put by a legislative committee. I do not want to get angry about it, but I do think it is an important matter. If it is at all possible in the next week or so, I would make the request to have the chairman of the committee or his designate from the advisory board itself appear once again in front of this committee and provide us with an opinion on whether it is yes, no, we do not care, whatever it is, even if it is, "We are not prepared to deal with that matter." I would like to have them back in front of the committee again, even if it is only for an hour or so, some time within the next two-week period so that this committee can at least do its job, which is to review the agency as it is and perhaps offer some opinion as to whether it should be continued in this form or some other form.

Finally, we struggled with this question among ourselves, as to how far the committee should go in terms of reviewing the act and this advisory committee. We had a little difficulty with that because most of us are in areas where we are just beginning now to hear that this act, which is not even in place yet, is going to cause some of our constituents some concern. I regret very much that an agency of the government that was given every courtesy in the world as far as I could see in its appearance in front of this committee, has seen fit not to respond. All we did was provide them with the opportunity to give them a place where they can voice their opinion or provide us with their advice. I regret that. Without any kind of prejudice or anger, I simply think the committee deserves a response from them and that once again we should provide them with an opportunity to appear in front of us and explain to us why it is that in four months they could not give us the courtesy of a reply.

Mr J. B. Nixon: I think there is a consensus of displeasure with the lack of a response. I do not mean to be frivolous, but it might not hurt including a transcript of today's Hansard with whatever you send to the commission. I would suggest offering them the option. They can either return at our pleasure, at a date set by this committee that is convenient for this committee, to explain their lack of response and answer questions or they can reply in writing and we can take either choice of action to be indicative of whatever we want to read into it.

The Chairman: Perhaps this will come into our discussion of the agenda for next week.

SUPPLEMENTARY BUDGET

The Chairman: If we can proceed now with the next item of business on the agenda, the supplementary budget which we discussed yesterday. The summary is \$31,902 for our supplementary budget. Are there any questions on this proposed budget?

Mrs Marland: You just went to this very quickly. Do I understand that we are going to give them a time limit to either respond or appear?

The Chairman: As I said, we will discuss that when it comes to our agenda for next week. That is the next item after this budget on our agenda.

Mrs Marland: Okay.

Mr Breaugh: Most of this proposal is pretty straightforward, the mechanics of the committee sitting and the provision of an account for providing legal counsel for the committee.

What I do not see is a provision in this budget proposal to provide for advertising or notice in some way. I do think it is important. I regret that I have a little difficulty at the moment providing you with that information. I think we do have a fairly standard budget estimate of what it would cost to advertise if the committee chose to do the notice provision by means of advertising in newspapers, which is probably about as quickly as one can do that. We had agreed that there would be an advertising budget, but I do not see any allocation here.

The Chairman: I discussed that yesterday with our clerk with regard to putting money in for advertising. Being that it is not in here, I kind of assume that is probably in our original budget. However, we would have to check that out.

Mr Breaugh: I would just caution you, it is fairly expensive to do advertising, particularly extensive advertising, in Ontario daily newspapers. We do have a little format we have kind of developed over the years about whether it goes into dailies, weeklies or whatever.

My concern is that on the matter of the Ontario Human Rights Commission, I would be somewhat apprehensive, if we did not provide some advertising, that perhaps we normally would not do, in the ethnic newspapers. If we are concerned about the human rights commission and how it deals with visible minorities, it seems to me there would be a lot of people who would have a pretty legitimate complaint that the public notice did not go in the only press they can read in their own language. It seems to me they would have a pretty legitimate beef.

Mr Velshi: Mr Brown is correct. Last year, when we discussed our budget for this year, we had allocated \$15,000 for advertising, which we have never had before. I think Mr Brown may have looked at that and eliminated it here. We can check that and make sure it is correct.

Mr Breaugh: Unfortunately, I do not think that would do it.

The Chairman: I think it is \$10,000 across the province to advertise in all newspapers. The \$15,000—I remember Mr Velshi is the one who mentioned it, to have it included in the budget, which we did—

Mr J. B. Nixon: I think your numbers are a little low.

Mr Breaugh: I am happy with the budget proposal as it is; I would just like that matter set aside. I think there was concurrence in the committee that we had agreed there would be public notice in the form of advertising. I think you are going to have to add another set of numbers in here, as well as that.

The Chairman: Then I think what we should do is accept the budget, subject to an advertising allotment which is deemed necessary to be included in this budget. Would that be agreeable: to approve the budget?

Mr Breaugh: Hold on for a second here. I would like to do that if

someone in the next few moments could provide me with an approximate cost of doing that advertising. I think that is possible.

Mr J. B. Nixon: I think the clerk just left the room to find that out.

The Chairman: That is exactly why the clerk has gone.

Mr Breaugh: We should table this matter for a few moments until we have that information and then deal with it, because I do not think there is any problem with it.

The Chairman: Okay. We will table that until the clerk comes back with the answer.

Regarding the agenda for the week of 14 August, which is next week, is it the feeling of the committee that perhaps we should have the chairman of the French Language Services Commission in for an hour or would you rather wait and try to find out if he wants to send us a letter?

Mr J. B. Nixon: What I was suggesting was that we choose a date which is convenient for the committee and offer them the option, express our displeasure—maybe include the relevant portion of today's Hansard—and say that they may reply by letter, we have asked them to do that, or appear. To be diplomatic about it, you might want to say, "Given the circumstances, you may wish to appear." Hint: explain.

The Chairman: I am sure the answer will be very simple. You will get a letter. I am sure they would not want to appear if a letter would do. It would save their time and a letter would be more simple.

Mr Breaugh: In as courteous a way as I can, we have been asking them for a letter for four months and we have not got one. I would like this agency, or someone representing it, to appear before this committee. I am quite flexible in terms of when. I believe we should give them a reasonable amount of notice—as much as we can—but I would put to the committee that at some time within the next two-week period I would like someone representing the Ontario French Language Services Commission to appear before this committee to provide us with an explanation as to why we have not received the advice we sought from it or why it has not been able to put together an opinion on the matter of whether its agency should be terminated.

They may have very good reason why all of this did not happen. I believe they could have told us that, if they chose to, in written form up until now. I will be as flexible as this: If it is not possible for anyone from that commission to appear in front of this committee in the next two weeks, I will accept reluctantly a written response, but I want to offer it an opportunity to appear and explain why it did not offer us the courtesy of a response.

Mr J. B. Nixon: I am content with that.

Mrs Marland: Did you say two weeks or three, since we have got three weeks?

Mr Breaugh: I am saying in the next two weeks. Even more flexible: While this committee is in session during the month of August, if at any point in time during that month they can find an hour or so to appear in front of us, that is fine by me.

Mr Runciman: I would rather take the approach that we simply make the request, if you will, that someone from the commission appear before us. I would do that rather than has been suggested, giving them an option of preparing a written response, because obviously there are some concerns in respect to the way they have dealt with our request.

From a personal point of view, I was not sitting during the 28 March meeting and I certainly would not want to go over turf that had already been covered, and I think I can take it upon myself to review the Hansard of that day. I have no problem with having someone from the commission appear before us for an hour or so—putting a limit on it in terms of time.

But there may be a few other matters that could be dealt with in respect to the commission's mandate and the implementation of Bill 8; other matters that some of us who did not have the good fortune of sitting during that time would be assisted by.

The Chairman: Okay. Can we have a consensus that we should have them before us?

Mr J. B. Nixon: If we are going to go back and rehear the whole matter—

Mr Runciman: No one is suggesting that.

Mr J. B. Nixon: That is what I understood you to be suggesting. So, let's clarify that. We are getting them back to explain: (1) Why they did not answer our letter, and (2) to give us their advice, if they have any, as to whether or not the commission should continue.

The Chairman: Is that agreeable to the committee? Agreed.

Our clerk today could not get hold of our regular clerk with regard to our budget and she is still investigating that.

Mrs Marland: On the budget, under the explanatory note where it says at the bottom, "Current budget," it says, "Funding for three weeks of hearings." We are into four anyway, are we not?

The Chairman: "This supplementary budget reflects those items deemed necessary to accommodate the additional time and hearings; however, it does not include any travel throughout the province should such travel be deemed necessary by the committee as a result of advertising and representations made to the committee." That is what this budget provides for.

1100

Mrs Marland: No, that is not my question. My question is on the page before that, where it says "for funding for three weeks of hearings." What I am saying is we are into four weeks of hearings without the first week of October.

The Chairman: Those weeks of hearings were already provided for in our previous budget. This is a supplementary budget to the one that was approved to allow us to sit for three weeks. My understanding is this budget here provides for an extra week of hearings.

Mrs Marland: Yes, but in August we are sitting for four weeks, are we not?

The Chairman: That is right.

Mr J. B. Nixon: We are asking for a fifth week.

Mrs Marland: That is right.

Mr J. B. Nixon: I assume when we are granted the fifth week we will have another supplementary budget. Is that right?

The Chairman: No, it is included in here. There are 10 days included, two weeks.

Mr J. B. Nixon: Okay, I got you.

The Chairman: So that is included in here.

Mrs Marland: But it does say three here.

The Chairman: We are trying to find out with regard to our advertising allotment. Next item on the agenda is with regard to next week. Our researcher may have some comments to make on who is available and perhaps what research we need for that.

Mr McNaught: The clerk would have arranged the attendance of witnesses, so I cannot comment on that, but on the research side of things the work for the Ontario Environmental Assessment Advisory Committee and the psychiatric facilities review boards is ready to go.

The Chairman: Okay, so then we will be meeting Tuesday morning at 10 o'clock to deal with one of those. I am not sure which one, is that right? Our regular clerk is in another committee today and that is why. He has the information and I think he is still working on it. Those are the two that are ready for next week.

Mr Runciman: So we are planning for Tuesday, Wednesday and Thursday next week?

The Chairman: That is right.

Mr Breaugh: Okay, so are we agreed then that is the agenda for next week—Tuesday, Wednesday and Thursday—and the two agencies to be reviewed will be the psychiatric facilities review board and the environmental assessment advisory committee.

The Chairman: That is my understanding.

Mr Breaugh: And we will be flexible in terms of the order?

The Chairman: That is right.

Mr South: And the hours are both the morning and afternoon sessions on the three days?

The Chairman: If necessary, yes.

Mrs Marland: Do we have any research on the environmental advisory committee or the psychiatric facilities that has previously been circulated?

Mr McNaught: The paper was presented back in March, I think, on the environmental committee. I do not know if you all have that or not.

The Chairman: Our clerk will be able to get that for you.

Mrs Marland: Could I have it, please?

The Chairman: Okay, could we have circulation of our background material for those two by this afternoon so we can read them?

Mr J. B. Nixon: Just out of curiosity, is there any reason why we are not sitting Monday? I am not necessarily urging we sit Monday.

The Chairman: A lot of members are from out of town and sometimes it takes time to get here. If we have pressing business—we had a five-day lineup for the Ontario Human Rights Commission where we were doing a certain thing—that is different. But normally it would be three days to allow those members from a distance some time in the summer to spend in their riding too.

We have next week's itinerary looked after. We are still waiting for word with regard to the budget.

Clerk pro tem: I have it.

The Chairman: You have the word. There is \$15,000, I presume, in the previous one.

Clerk pro tem: Yes, there was \$15,000 put into the previous budget and none of that has been spent. The \$15,000 will cover one advertisement in all of the daily newspapers in Ontario.

Mr Breaugh: The problem is that would preclude the committee, for example, doing any further advertising on another matter. I am not sure this quite fills the bill, but let me make this as a proposal, that we put in an additional allocation of \$15,000 for advertising in this supplementary budget. Between the two, I do not think we will require it all but we will be able to accommodate what we want.

I am particularly concerned that, for example, on the Human Rights Commission there is ample provision in a budgetary sense to make sure we can advertise in a language people will understand and are comfortable with; that is, their own language. We will be trying to reach out. I believe we do have a supplementary list of newspapers, other than French and English, and we can prepare that. I am just concerned at this stage that we have enough in the budget to allow us to exercise that option should we choose to do so at a later time. Between the two budgetary proposals we should be able to do that.

The Chairman: We have an item in the budget for translation of documents.

Mr Breaugh: That is not the point.

The Chairman: I know it is not.

Mr J. B. Nixon: I will second that.

Mr Breaugh: Just to argue it briefly, I believe that within the normal budget allocations of the committee and the supplementary budget we can

accommodate what we want. I am just a little bit concerned that we do not drain totally the approved budget of the committee, so I am simply asking that we include an additional amount here to ensure we can do that.

The Chairman: \$15,000?

Mr Breaugh: Yes.

The Chairman: Is that in agreement with the committee? Agreed. Any further business?

Mr Runciman: I just wanted to talk about the following week. We are sitting the following week as well, are we not?

The Chairman: That is right.

Mr Runciman: The Ontario Securities Commission was one of the groups that was going to appear before us. I just wanted to reiterate my request made earlier that, if at all possible, the new chairman attend that session with the committee. I think it would be helpful.

I am not sure if it has been completed; I assume it has been, but one of the requests we made was that the Provincial Auditor conduct an efficiency audit of the OSC and that we were going to go back to it after that audit had been completed. I do not recall its being placed in our hands. I am not sure what the format is in respect to that sort of thing. Will it go to public accounts? Since it was a request of this committee, we should have copies of that audit. I think that is the only effective way we can deal with the OSC when it is before us.

The Chairman: Our clerk will check into that and find out if that audit has been completed and is available. I had some things from the OSC just recently—I cannot put my hand on it; I guess it is in my office—with regard to some recommendations. So that could be the report.

Mrs Marland: Since we are not spending any of the four sitting weeks in August on the Ontario Human Rights Commission, are we only going to plan one week in advance? The reason I ask that question is that we should look at what we are going to do the week after next and the last week of August; yesterday we were saying that we could not have the Ontario Human Rights Commission before the committee, because we were not giving enough lead time for those groups to prepare to appear before us. I think that which ever groups we are now talking about dealing with through our August hearings, we should be planning more than a week in advance. I would like to know what our agenda is, whom we are going to be having before the committee and what kind of lead time we are going to give to those groups.

The Chairman: The groups that have been notified were the Review Board of Psychiatric Facilities; the Ontario Securities Commission, which we are having back before us; the Ontario Environmental Assessment Advisory Committee, which we are doing next week; the Review Board of Psychiatric Facilities is one that has been contacted and I have a letter back from it recently, indicating it is sending us further information we requested; the Royal Ontario Museum board of trustees; and the Stadium Corp of Ontario Ltd. I do not know whether that is necessary or not, as some people indicated that the standing committee on public accounts was dealing with that. Our clerk has been working on these and waiting to get answers back. The ones we have prepared for next week are the two that were indicated earlier and when we get word back from the others, then the clerk will advise us at that time.

Mrs Marland: Should we make a decision on the stadium corporation, for example? If it is being reviewed by public accounts, does this committee want to use the time and go to the expense of duplicating that, or is there another aspect of the stadium corporation that this committee would be looking at that public accounts would not be looking at? If we are going to duplicate it, then we should select another agency that the clerk could contact instead.

The Chairman: On the week of 28 June we sent out a list of what we would be dealing with on the week of 14 August, the week of 21 August and the week of 28 August.

The week of 14 August we were to clean up the Ontario Food Terminal Board, the Ontario Securities Commission and the Ontario Human Rights Commission—at that time we did not realize we were getting this resolution—and the French Language Services Commission.

The week of 21 August we have the psychiatric facilities review boards, briefings and hearings, and the Ontario Environmental Assessment Advisory Committee, which we are putting ahead now and doing next week. In the week of August 28 we have the Royal Ontario Museum Board of Trustees, briefings and hearings, and the Stadium Corp of Ontario Ltd, briefings and hearings.

That was our proposed agenda. As I say, if the committee as a whole wants to change that agenda at any time it can do that. Now we have our lineup for next week, and the following week we will know when the clerk reports to us from the letters he will get back from those people when they are ready. They have been notified that we are going to be reviewing them.

Mrs Marland: Can someone answer the question whether the standing committee on public accounts is looking into the stadium?

Mr J. B. Nixon: Yes, it is.

Mrs Marland: Well, I do not know what advantage there would be to having two legislative committees review the same agency or crown corporation.

The Chairman: My understanding is that the public accounts committee is looking at any cost overruns in the financial part of it. What we do is review the operation of the board and look at whether we feel it is functioning or not. We do not get into the total aspect of whether there was an overrun at the stadium or not. We look at the operation of the board. That is what this committee does. We can still do that.

Mr Runciman: I assume that means going on site.

The Chairman: It may not be a bad suggestion.

Okay, is there any further business?

Mrs Marland: You have answered the question, that the two committees would be looking at two different aspects, which is what I had asked, so I am quite happy to leave that on the list. We did not discuss the food terminal this morning. You just read that in the agenda. What is the status with the food terminal?

The Chairman: I believe Mr Brown brought us up to date on that yesterday, stating that there are still some negotiations going on. Mrs Grier is the critic for the opposition party and she indicated that they are not

completed yet and therefore we should not proceed at this time. Though I do believe that we should finalize it during this month of sittings somehow, I think we are really dealing with the operation of the board and should not be getting in too deep on whether we should be telling it whether it should proceed with C units or whether this should be done. I do not think that is our job. I think there should be some way we can finalize that report.

Mrs Marland: I have sat on that subject for some time now with Mrs Grier. That facility is in her riding. I share very much her concerns on this matter and I do not agree that we should not get into their leasing. I think the responsibility of this committee when we look into the operation of the Ontario Food Terminal is that yes, we look into the board but we should be looking into how the board is doing its job. The only controversy at the Ontario Food Terminal is the leases and it is the board that is making the decisions on those leases.

I think it is something on which the people in that business are looking to us for some remedial recommendations, to try to sort it out. I think Mr Breaugh was chairman when we looked at that facility four years ago and it is not any better now than it was then. So I concur that I hope we will be able to deal with it and that Mrs Grier will be available at some point because her input on that subject is very valuable. She spends a lot of time trying to deal with the problems there.

The Chairman: Perhaps you and Mrs Grier could get together some day and try to come up with a report for us.

If there is no further business for this committee, we will adjourn until 10 am on Tuesday in room 230.

The committee adjourned at 1114.

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Publications

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STANDING COMMITTEE ON GOVERNMENT AGENCIES
AUDIT PROCEDURE, ONTARIO SECURITIES COMMISSION
TUESDAY 15 AUGUST 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Callahan, Robert V. (Brampton South L) for Miss Roberts

Kozyra, Taras B. (Port Arthur L) for Mr Ballinger

Tatham, Charlie (Oxford L) for Mr Miller

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

From the Ministry of Consumer and Commercial Relations:

Stephan, Elie J., Assistant Director, Internal Audit and Operational Review
Branch

Hunt, Shannon A., Supervising Auditor, Internal Audit and Operational Review
Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday 15 August 1989

The committee met at 1410 in room 228.

AUDIT PROCEDURE, ONTARIO SECURITIES COMMISSION

The Chairman: The standing committee on government agencies will deal this afternoon with the Ontario Securities Commission with regard to the audit procedure. I believe we have Elie Stephan before us and he can introduce the person he has with him. Do you have an opening statement that you wanted to make, Mr Stephan, or did you have a presentation you would like to make at this time?

Mr Stephan: I will start with my presentation. My name is Elie Stephan. This is my colleague, Shannon Hunt. We work for the Ministry of Consumer and Commercial Relations, the internal audit and operational review branch, and provide audit services for both the Ministry of Consumer and Commercial Relations and the Ministry of Financial Institutions.

This audit was requested by your committee. The request was that the Provincial Auditor should be doing the audit. However, since this audit was already planned by our branch and the Provincial Auditor's office was aware of it—and it does rely on our work—it had no problem with us carrying on the audit on its behalf.

What I propose to do this afternoon is explain the comprehensive audit process to you, what a comprehensive audit is and how we go about it. I will give you a little bit of familiarity with what we are going to do at the Ontario Securities Commission. With that, I will start with my first slide.

I chose to start with a slide that deals with the branch itself, what our mandate is and who we are. It will take just a few minutes. The mandate of the internal audit and operational review branch is to assist the deputy minister and the management team of both ministries in the effective discharge of their responsibilities. This includes providing them with assessment and evaluation of management controls as well as electronic data processing, financial and administrative controls and providing them with assurance if we find that all these controls are in place and working effectively. Otherwise, we would provide them with the recommendation to improve the systems we are looking at.

In addition to our mandate to provide audit services, we also provide activity review and program evaluation services. The difference between an audit and an activity review is that the auditor will walk into an organization, ask about the mandate and the mission and the raison d'être and accept them as his or her Bible. We audit to them. We find out what the various functions are that have been established by the audit entity in order to achieve those objectives, whereas a program evaluator would normally ask the questions: "Are the objectives still valid? What was the environment at the time when the objectives were established? What happened to this environment? If the environment has changed, should the objectives change?" Right now, we are not doing a program evaluation. It is strictly an audit.

In addition, we have some consulting mandates. Our branch provides

consulting services to both ministries. When a new system is being established or redesigned, we are usually invited to partake in the project as a partner. For instance, we have some of our auditors right now, EDP auditors and Andy Tsang and his team, working on various computer systems. We go in and we work with the team in an advisory capacity. Shannon Hunt is working with the Pension Commission of Ontario—which is doing its own operational review—again in an advisory capacity. We think they are doing an excellent job.

The way we handle the audits is that we try to go in and work with the auditees as part of the team. We figure that our consulting skills and their program skills, put together, will result in a good product so that they feel they also are the owners of the recommendations.

1420

What are the general objectives of a comprehensive audit? There are two modules, maybe even three. One module is the financial component of a comprehensive audit. We try to determine the reliability and the integrity of the financial information as well as the financial systems. We also evaluate the extent of the audit entity and their compliance with the policies, plans, procedures, laws and regulations. I will be describing a little later some of those processes. We evaluate the extent of their compliance with procedures to safeguard assets of the management side, or value for money, if you will.

We determine the reliability and integrity of the management information like the management by results: is the information that has been provided to senior management valid? This information is very important because it provides a basis for some important decision-making. We ensure that there is due regard for economy and efficiency. We look at the various management processes, whether the planning, the organizing, the directing and so on, and we try to determine whether there are appropriate procedures to evaluate and report on program effectiveness. We do not go in and tell them under our audit mandate whether they are being effective and achieving their objectives, but we ask them, "How do you know you are doing a good job and achieving your objectives?" We look at all their management processes in place.

A comprehensive audit process has five phases: the project organizing, the preliminary survey, the design of the audit programs and carrying out field tests based on those programs, the reporting and the follow-ups which I will be describing in a few minutes. Right now we are in the preliminary survey stage as far as the Ontario Securities Commission is concerned. The preliminary survey is an overview analysis which helps plan the comprehensive audit. During this process we obtain familiarity with the review entity. It is very important for us as auditors to understand the environment itself. We go in, we talk to people, we familiarize ourselves with everything, the environment, the culture, the way they do things, because one thing we want to avoid if we want to help management is at the end to give them recommendations that sound good on paper but they are not very realistic or practical. It is important for us to familiarize ourselves with the environmental constraints—not only financial constraints but any kind of constraints—opportunities and so on.

We develop lines of inquiry. These lines of inquiry are generic and specific. I will be giving you some examples a little later on. We establish the assessment criteria to be used for the review and at the end to identify potential issues. That is how we start our preliminary survey. We try to familiarize ourselves with the management process. We look at their planning

submission, which is called operational plans. We look at all the acts and regulations. We try to determine whether all the activities that are carried out are included in the legislation or whether there is anything in the legislation that is not being done. The MBR abstract, the approved estimates and allotments and the MB20s—numbers four and five are related and they are very important steps in the sense that when an audit entity submits an MB20 they usually make a case why they need the money and they provide, again, lots of information about the environment, the opportunity and what they are proposing to do with this money; so it is important for us to be familiar with this and later on maybe you will want to follow up and find out whether what they said they were going to do with this money, they have in fact started working towards it, if not accomplished.

The COBIS variance report, the various financial analyses, monthly management reports, the organization charts and so on, we try to get lots of familiarity with the audit entity, and this is what we are doing right now.

Mr Breaugh: Can we have that in English? Do you want to put that last slide up there for a minute. What is an MB20?

Mr Stephan: This is a Management Board of Cabinet submission. If an audit entity wants to ask for some money that is not part of its original estimates, it provides for code MB20 asking for more money.

Mr Breaugh: I got you. What is an MBR abstract?

Mr Stephan: Management by results. I apologize. It is a form that reports on the plans that the audit entity had earlier provided. The MBR itself provides for what is planned to be done in the next, let's say, reporting period; let's call it six months. You say: "I have the operational output. I am going to do so many cases, so many investigations and the program effect of these investigations will be improved safety, improved protection of the public and so on and so forth." At the end of the reporting period, they provide the MBR abstract reporting on what they have accomplished vis-à-vis that plant.

Mr Breaugh: What is an MBR variance report?

Mr Stephan: The MBR variance report is an explanation of the variance and why there was a variance.

Mr Breaugh: I got you.

Mr J. B. Nixon: What is a COBIS?

Mr Stephan: A COBIS is the common object information system. It is strictly a financial system that some of the ministries are using for their expenditures. It shows the budgeted amounts by line item and then how much was spent at any one point in time and how much funds are available, whether they went over budget or not.

Mr Runciman: Mr Chairman, I do not want to cut in on this gentleman, I am just curious—and I apologize for being late—as to why we are doing this. I was involved with the original recommendations in respect to the Ontario Securities Commission and I know that at that time we called in the Provincial Auditor to go in and conduct an efficiency audit.

I just hope that the presentation we are having here today is the

explanation of how an internal interministry audit is conducted; and I do not see what relationship that has with the request of this committee some time ago. I do not know how this was arranged and I do not mind learning this; it is probably useful information. At the same time, I am a little bit confused as to what this has to do with the recommendations that the committee sent months ago.

The Chairman: I think the question was that the committee also wanted to know whether an internal audit conducted by the ministry would differ in any significant way from an audit conducted by the Provincial Auditor.

Mr Runciman: Are you suggesting that we do away with the Provincial Auditor's office? Is that the gist of that?

The Chairman: No. I think the basis is an internal audit, the same as ---

Mr Runciman: Obviously not. That answer is self-evident, I would think.

The Chairman: I think what he is trying to do is to explain the difference. Whether we are following him or not, that is—

Mr Runciman: I have a question. Did the Provincial Auditor not go in there and conduct that audit as requested? I was told at the last meeting that that audit was conducted and we would hearing some evidence in respect to that. That was my view of why we were going to be calling the OSC back before us. We would have the results of that audit before us to help us deal with the concerns that were raised some months ago.

The Chairman: My understanding was that the audit was not going to be done until October 1989 and we were not going to have a report. I think we thought that we should call them in and find out what stage the audit is at and for them to indicate to us what has taken place. I think that is what he is doing. However, if anybody has—

Mr Runciman: It seems to me like a bit of a waste of time, but that is not unusual in this place.

The Chairman: It may be, but for the new members it may be an educational experience.

Mr Breaugh: I just ask that it be in one of our official languages, that is all.

The Chairman: You may carry on, Mr Stephan, if you were remember where you were at.

1430

Mr Stephan: Once the auditors familiarize themselves with the operations, we identify key personnel to interview at a later date and establish some of the general lines of inquiry. These include questions related to the entity's mission and mandate, its role, what the various objectives and supporting goals are, some questions about the act and regulations, policies and procedures that are in place and we discuss the organizational structure with management of the entity. We look at the

management processes; namely, planning, organizing, directing, resourcing, staffing and evaluating. We look at the input—what goes into the operation, what transformation process takes place and what the output is; what happens to it. As you can see, it is a very thorough management evaluation.

I will give you a little example of some of the criteria used to evaluate the management processes. Let's take the planning process. We look for the guidelines. Do they have guidelines for planning? Is there consistency? Do they know what they are planning for? Who is responsible for planning? Are appropriate staff levels involved in planning?

We interface with the environment and the client group. It is very important for the audit entity to keep in touch with its environment. We try to determine future demands for possible services; we cannot just sit and wait for things to happen. They have to keep their environmental scanning going so they know what will happen to their own business.

Still on planning, are mechanisms in place for gathering planning data? How practical is the planning information and how valid are the forecast, human resource inventory and skills profiles? If they know where they are going and what their objectives are going to be at some point in the future, then they have to start planning right now: "Do we have the people and skills to do this job? If not, what do we have to do about this?"

The planning process has to come up with a statement of objectives. These objectives are measurable; they can be verified. They reflect the organization's purpose and are consistent with the ministry's statement of values and the ministry's purpose.

The list goes on; I have given you just a little flavour; I have 40 pages that I will not go through. It is the same story with the organizing process.

We found that survey questionnaires are a cost-efficient means of collecting information not only from senior management. We cannot afford to go to interview everybody, but if we want good results, we have to talk to as many people as possible or at least obtain their input. We designed some questionnaires to go to the rest of the staff, and they are open-ended questions. I think the objective of the branch is, "Let them tell us." We know what the objectives are, but we want to make sure that everybody understands them. You might be surprised sometimes at how many different answers you get as to what the objectives of a certain branch and ministry are. Unless people know what they are trying to accomplish, they will not achieve their objectives.

Again, we give them the chance to tell us, if given the opportunity, what they would change their objectives to. That shows whether these people are working towards objectives that they are not in agreement with and there is no commitment; and if there is no commitment, you do not achieve your objectives.

Again, just to give you a little flavour, I have about 30 or 40 questions, but I will not go through them in detail. I will just skip a couple of slides and say, "How do you schedule your work? List a few typical job-related problems that you refer to management for resolution." Again, when you look at 20 or 30 questionnaires coming back from the field, and you see there are two, three or four types of problems recurring all the time, you start asking the question, "Why doesn't management take a proactive stance instead of waiting until things blow up in its face?"

Mr Callahan: Are there names quoted in those questionnaires or are they just anonymous?

Mr Stephan: What we do is tell them that it is optional whether you want to sign or not. At the top it says, "Confidential Questionnaire." If they wish to sign, it is okay, but we give them every assurance that the results will not be shared with management as to who said what. We do let management know the overall results.

As I said earlier, we design our questionnaires, we conduct our interviews, we evaluate the results and we come up with the assessment criteria, as I have described, and then we come up with a list of conditions disclosed during the preliminary survey. We try to highlight areas that we should be testing for later on. We discuss those areas with management. We tell them what we found during the prelim survey and that there are some deficiencies. They say: "We agree with you. This is happening. It's okay." So that becomes a finding. For others, we go and design programs to test specifically for some of these situations.

One little example of a specific program in the area of the mandate: Tell the auditors step by step what to do, compare the functions identified during a prelim survey to the functions described in the act, regulations and memorandum of understanding and identify the functions in legislation that are not being performed. That is very important. Then if there is something else that is being performed that is not in the legislation, try to find out why we are doing it. Is it a question of policy and, if so, what was the policy? If not, why are we spending money doing this stuff that we are not even responsible for and so on.

During the test phase, which we have not yet reached, we also test and evaluate the management processes, as I indicated, and we do highlight areas of excellence. We are not only going in looking for deficiencies and weaknesses, but if they are doing something good, we would like to report on it as well. It is balanced reporting. If there are areas where improvements are required, we will look at them.

Finally, after all the tests have been completed and the analysis performed, we do the reporting. This usually takes time. During the normal course of the audit, we keep the client informed all the time as to how things are going. At the end, we go and make a slide presentation, like now, and we tell them what we found and what our impressions are. We go back to the office, write a draft report and send it the client. We let them read it and think about it and come back to us with their response. Once we finish discussing all that and everybody is satisfied, reasonably at least, we issue our final report.

The Chairman: While you have a break there, are you doing the audit for the Ontario Securities Commission? Who is doing that?

Mr Stephan: I am managing it. Shannon is providing the field operation supervision, and I have another supervisor, by the name of William Ramsaroop.

The Chairman: He is working for you?

Mr Stephan: That is correct.

The Chairman: And you are responsible for the audit of the OSC?

Mr Stephan: That is correct.

1440

The Chairman: You are not going to have that audit done until some time when?

Mr Stephan: I would say late fall.

The Chairman: The fall?

Mr Stephan: That is correct, because right now we are at the preliminary survey. We are trying to establish all the various controls that are in place and come up with a list of concerns. Then we can discuss those with management. Then we will start field testing.

At the end, we have to sit down and discuss our findings with management and write a draft report, which could be anywhere from 40 to 150 pages, give it to management and give them 30 or 40 days to respond to the draft. We take it, evaluate their response and then finally issue a final report.

I imagine the field work would be completed maybe some time in late November and the draft report would be issued some time in December. There are many areas we are looking at, numerous areas.

The Chairman: Are you at liberty to indicate to us any of your findings in the audit you have done that perhaps we should be talking to the chairman of the board about?

Mr Stephan: At this stage, I would say it is not wise for me to do so, because these are preliminary observations only. I can indicate to you that as we go along, we are adding to our list some areas we would like to look at specifically. I could share some of those areas with you, but a word of caution: The fact that we are looking at one area or another does not mean that there is something wrong in it; this is where we think there is going to be a payoff. If you wish, I can list some of those specific areas.

The Chairman: I think it would be to the benefit of the committee if you would.

Mr Stephan: Okay. We will be looking at the effectiveness of secondment and contract positions at the senior staff level, because the commission hires people from the industry on a secondment basis. These people are given management positions, and then a year or two down the road they go back to their firm, whether it is a law firm or an accounting firm. We want to evaluate the impact of this on the morale, on the continuity, on the results—people coming in for three years and going back.

The mandate of senior staff functions, like the legal adviser, the general counsel, the chief accountant: What do they do and what is the difference among all these offices and functions?

The impact of salary levels for professionals on operations and program delivery: Will that affect their ability to attract qualified staff from the field, because it is a very competitive field?

The utilization of professional staff: After we finish our reviews, we may determine the need for establishing intermediate staff, so that the senior staff may not have to do some clerical work.

The need for legal expertise versus management skills at the senior level: Is it more important to have people with technical skills or managerial skills, or can you find both?

Co-ordination of compliance, audit and enforcement—the early warning system—how do we prevent another Ulster from happening?

The Chairman: Could you maybe broaden that out a little bit? What are you looking at in that regard right there?

Mr Stephan: We are looking at, should they stay in a reactive mode or should they move into a more proactive mode: go in and do audits, not wait until a problem happens; let's go and find out if there is a sign of risk; if something does not look good, we head it off before it happens and costs millions of dollars.

The strategic planning process: We want to look at the participation of senior managers in the operational planning and the budgeting.

The environmental scanning and contingency planning: This is a very dynamic field and we want to make sure that the operational planning, as well as environmental scanning, is in place so that we can truly be proactive, sort of plan for the future.

The actions taken by the Ontario Securities Commission to promote and communicate a proactive regulatory stance, as I told you earlier.

The training initiative of staff: the rotational opportunities; co-ordination of research efforts; the sharing of precedents, because you have multiple teams looking at various cases and investigations. One evaluates the means they have to share the knowledge gained.

The effectiveness of the performance appraisal process: Do people know how they are going to be evaluated?

Policies and procedures: Do they have them in place to provide consistency?

Job specifications: We want to make sure they are current and reflect the job requirements so that people know what their duties and responsibilities are.

Productivity of senior management meetings: We want to look at the items on the agenda that the senior management committee deals with. Is there an agenda? When a decision is made, is anybody given the responsibility to take action, or if a decision is made, what happens to it? Who does the follow-up to make sure that senior management decisions have been carried out?

I am going to look at the management information system, the intelligent summarization and presentation of data and what happens to it.

The standards to measure productivity: Do they have them in place, are they working and do they make sense? Without standards, really, you cannot achieve many results. You cannot even determine what your staff requirements

are. We are not saying they do not have it, but this is an important area we want to look at.

The presence of the quality control function: When the team finishes looking at 3,000 or 4,000 pages of documents regarding an investigation, what happens to it? Is anybody reviewing the results?

We want to look at the security and confidentiality of the information, the control over the revenue and expenditures, as well as assets and the role of the Ontario Securities Commission with respect to self-regulating organizations. How do they interface with those self-regulating organizations like the Toronto Stock Exchange or the dealers' association? These people do have a mandate to hold hearings and control their own members; so how do they interface with the Ontario Securities Commission?

The Chairman: Okay. Do you have any more slides?

Mr. Stephan: No, I do not.

The Chairman: Mr. Runciman, do you have a question?

Mr. Runciman: When was the last internal audit of the OSC conducted?

Mr. Stephan: There was one financial audit conducted about six or seven years ago, but to my knowledge there has never been a management audit of this magnitude conducted by anybody, as a matter of fact.

Mr. Runciman: What prompted this audit?

Mr. Stephan: It has been in our plans. We have a multiyear plan, and that was scheduled for some time this year. Then your committee requested the audit from the Provincial Auditor. We do compare notes with the Office of the Provincial Auditor. They knew we were going to do the audit and they had no problem with our carrying out this audit, because they do rely on our work. We keep them informed, mind you. I just talked to Nick Mishchenko, their director, this morning.

Mr. Runciman: The fact that you noted that we were asking the Provincial Auditor to go in there sort of speeded up your schedule in respect to taking a look at this from an internal point of view.

Mr. Stephan: I would not say so. It was scheduled for this year and it was on target.

Mr. Runciman: I just talked to the assistant auditor, and his view was that all of a sudden there was an interest in doing an internal audit. He mentioned to me that the Provincial Auditor conducted reviews of internal audits in 1981 and 1987 and found both times that they lacked depth in the type of coverage and so on.

I guess that was my concern when I brought this forward originally, that we have the Provincial Auditor go in there, not an internal audit. I think there was some suggestion by the chairman, Mr. Beck, at the time that they were due for an internal audit, that it was going to take place at some point in the not-too-distant future. If we review Hansard, I think my concerns were that it would be more appropriate to go in and take a look at it with the Office of the Provincial Auditor.

You have touched on some of the things—staff turnover, morale, the Osler collapse and so on—that were concerns expressed at that time. Is it your plan to bring this report to our committee?

Mr Stephan: May I answer one comment you made a little earlier. The 1987 audit that was done by the Provincial Auditor of all the internal audit branches in the government found that there were only four ministries that could be relied on, and we are one of those ministries, so they should not have any concern whatsoever with respect to our work. They have access to our work at all times.

As far as tabling this report to your good committee is concerned, I would say that in accordance with our terms of reference, we will be presenting our report to the chairperson of the Ontario Securities Commission and he or she, whoever the person might be at the time, will be tabling its report in this committee, I imagine, and then we would come with them to answer any questions.

1450

Mr Runciman: I see. I guess the only other question I have at this time is with respect to timing. You are suggesting it will be late November. I guess you are talking about the magnitude of this audit as unprecedented. I was just looking at the situation. Perhaps I am comparing apples and oranges here, but when the Provincial Auditor was asked to take a look at the operations of Ontario Place over a period of time while Mrs Starr was in charge, it was able to go in and, I gather, accomplished that in a very short period of time.

Here we have had a request on the books that goes back to I do not know when. When did we make these recommendations? Probably last November. We have had the chairman, the executive director and a number of senior people leave in that period of time. It strikes me as passing strange, to say the least, that we made our recommendation and are still looking at a year from the original recommendation, or a considerable period of time in any event, before we can see any results forthcoming from that request.

I cannot lay that all on your shoulders, obviously, but I am getting it off my chest.

Mr Stephan: Thank you. I appreciate it.

Mr J. B. Nixon: I would have to disagree with Mr Runciman.

Mr Runciman: Surprise, surprise.

Mr J. B. Nixon: It is not passing strange to anyone who is an objective observer of the Ontario Securities Commission. With Ontario Place, we are looking at a small corner store operation that takes cash in and pays bills and has a slowly reducing deficit. In the case of the OSC, we are looking at a commission that regulates other regulatory agencies, that regulates markets that are interconnected globally and that makes policy decisions which occasionally have international and global impact. The scope of the audit being proposed or pursued is so broad and significant that it is incomparable to that which occurs at, or any possible audit that could take place at Ontario Place.

I share your concern that it be done as expeditiously as possible, but I also do not think it is something that can be done in a matter of weeks or a

couple of months without prejudicing the nature of the audit that is going to occur.

Mr Runciman: Perhaps I may interject. I am sure Mr Nixon will not mind. I said I may be comparing apples and oranges in this respect, but I think the bottom line is the fact that we made this recommendation some period of time ago.

Mr J. B. Nixon: That is fair. I agree with you on that, but I am just strongly insisting that it is apples and oranges.

Mr Callahan: I will pass. I am happy with apples and oranges.

Mr Breaugh: I would like you to elaborate just a little bit on whether there is a real difference between the audit you are doing and an audit that might have been done by the Provincial Auditor. What are the differences?

Mr Stephan: I have never worked for the Office of the Provincial Auditor. However, in my view, provincial auditors go in and evaluate the operations. We go in as members of the team and do it very thoroughly. We look at all the operations, as I have indicated to you, and this may be a partial list that we are building on. Then we sit down to work with the team and provide lots of recommendations. We not only tell them what is required to be done, but also suggest some solutions of how they can deal with it. The Provincial Auditor does that, but as members of the team, we do it on a wider scale.

Mr Breaugh: I will just try to be polite about it. I still await the answer. What the hell is the difference between what you do and what the Provincial Auditor does?

Mr Stephan: In principle, very little, except that our scope is a little wider. We look at more operational aspects than they do, but the modus operandi, I imagine, and the objectives are usually very similar. That is why they are comfortable relying on our word.

Mr Breaugh: Let me try it this way: One of the areas of concern you pointed out is one that has bothered a number of people and that is the practice that some people work in a regulatory sense at the Ontario Securities Commission for a period of time and then reappear in the private sector. So one day they are writing the rules and the next day they are exploiting the rules. Some of us tend to think there is something wrong with that.

From a management audit point of view, one could make an elaborate argument, I imagine—and they probably are—that seconding people from the private sector is a great way to tap into their expertise. They know the business. They have contacts in that particular line of work. They understand what they are regulating. I could probably go on for several days and give you a very good page full of reasons why seconding people from the private sector is great, and from a management point of view, it may be. From an auditor's point of view, it may not be.

It seems to me that would provide the difference between what a Provincial Auditor would be looking for and what an internal audit would be looking for. An internal audit may look at that from a management point of view: "This is great stuff. We do not have to train these people. They already know what they are doing. What do we care whether they might exploit their own

regulations next week, next year or two years from now? We get expertise, which is what we want, and we develop it quickly on the outside. Someone else pays for the training and we just cream off all the juice, and if in two or three years' time they go back to the private sector, we do not care."

But a Provincial Auditor might look at that same situation and say: "But that is unethical. That is wrong. That is allowing someone unfair advantage in the marketplace and that is not why the Ontario Securities Commission is supposed to be there." Give me a little bit about that.

Mr Stephan: First of all, I want to comment on something you said, that I expressed it as a concern. This is not yet a concern. It is an area we want to evaluate. It is our early indication at this point that controls are in place to try to prevent any conflict of interest. As a matter of fact, one of the documents we have reviewed was on conflict-of-interest policies and procedures. It is a thick document. Staff are ensuring, at least it is part of their job specifications to ensure that there is no conflict of interest or self-interest.

The rules and regulations of the commission are widely publicized. They even have a communication plan. They tell the public in general about everything they are doing. They educate the public so everybody under the law will be treated equally. This is an area we will be looking at, and if we see any evidence of situations like the ones you have described, we will be commenting on it.

Mr Breaugh: I guess one of the things that bothers me just a bit is that I have no objection to an internal audit process. Basically, it is a very good management procedure to go through, but it may not be in the public's interest to have it done that way. I am a little bit concerned.

Let me put it this way: If at the end of this, the internal report that you do is presented to the commission, it presents it to this committee and we have a good public kick at that and discuss it thoroughly, I suppose the process will have been served. But it is a different process from the one I think we anticipated having done by the Provincial Auditor. There is a different plan involved. It is done for different reasons and it is done certainly at a different pace.

Mr Stephan: The end result is the same. I do not know whether the Provincial Auditor, in view of his workload, could have jumped on it and done it immediately upon your requesting it. This branch did have other audits in progress and you cannot start an audit unless you finish the ones that are in progress. As far as the process itself is concerned, I can assure you that the end result will be achieved in the sense that the Provincial Auditor has access to all our reports, all our working papers, all our staff. In addition, there is always freedom of information.

1500

Mr Breaugh: Save us from that, please.

Mr Stephan: So my answer to you is that whatever you ask for, I think the result is going to be achieved. You will have access to this report. It will be tabled before this committee and you will have access to all our findings and recommendations. That is one of the reasons the Provincial Auditor is very comfortable with us doing the report and the audit in general.

They know we are objective and independent. We have the full support of senior management and then we are independent.

Mr Breaugh: It begs a question or two, but I will let it go.

Mr J. B. Nixon: I would like to make a comment that perhaps the clerk of the committee could pull out a recent newspaper article. I think it might be of interest to the people who are before us today. It was in the Report on Business last Wednesday by Bud Jorgenson, and it was talking about the issue of staff salaries and the secondment process. You have probably seen it. It might be useful for the committee to take a look at it.

The Chairman: Thank you.

Mr Runciman: I will just confirm what this gentleman said with respect to the auditor's office. Talking to Mr Otterman, he indicated that if indeed the committee wishes, the auditor would be quite prepared to review your report to see if he sees any weaknesses and what have you with respect to areas perhaps they did not probe, but should have probed and so on. Their office is quite prepared to look at a request from this committee.

Mr J. B. Nixon: Just following up on Mr Runciman's point, perhaps what we could do is that if we are getting this report back and the chairman of the commission is going to be appearing to present the report or comment on the report, if in November when we hear from him, or December or whatever, if the committee is dissatisfied, we can just say to the Provincial Auditor, "Please look at it."

The Chairman: Okay. Have there been any surprises you have run across while you have been doing this report so far, any area that has really caught your eye that you may look at more in depth?

Ms Hunt: I do not know about surprises, nothing that would be particularly surprising. They were all briefed.

Mr Velshi: Just returning to the presentation that was made to us, once an audit is completed and you have made your recommendations and the report is handed to the deputy minister, what then happens? Do you ever go back to that report a year later and find out whether the recommendations were carried out?

Mr Stephan: In general, we do. As a matter of fact, before the report has been finalized, we get a response to our final report. Each recommendation is specifically addressed and we ask the auditees in writing to give us their implementation strategy and the implementation target date. We evaluate their response and if we think it is adequate and proper, then we issue a letter to the deputy minister stating so. If not, we may issue a follow-up letter and it has been our experience in the past that follow-up audits do take place when there is a need for them. A year or two down the road, we go and select certain highlights and then just point out what has been done about them.

Mr Velshi: So your follow-up is only if the need exists? It is not an automatic thing to follow up every audit that is completed.

Mr Stephan: Not every audit is followed up with another audit. Every audit is followed up with an action plan, but if there is a need for it, yes,

we do a follow-up. Even the Provincial Auditor in most instances does not go and follow up an audit with another audit anyway.

Mr Velshi: I am not referring to a second audit; just the following up of the first audit and following up the recommendations made, because your system seems to be that with the recommendations you make, you have some sort of interplay between you and the people who are supposed to make the changes and that is an almost immediate response to your audit, but down the road, a year later, do you check if those recommendations were really and truly carried out?

Mr Stephan: If there is a need for it, we do. As a matter of general practice, we do not always go and do it, but in audits that disclose some specific results that indicate the need for it, we definitely go in and do it. We have done it in many instances in the past, not as a matter of routine, but each situation is evaluated on its own merits.

The Chairman: Thank you. Elie Stephan is assistant director, internal audit and operational review branch. His assistant is Shannon Hunt, auditor supervisor, internal audit and operational review branch. We want to thank you for appearing before us today and we hope your report will be an excellent one and will not find any problems. Thank you very much for coming.

Committee members, tomorrow morning we will be dealing with the Environmental Assessment Board. As they are going to be here tomorrow, I advise you to go home and study that report in depth and have some very good questions for that board, which will be attending before us at 10 am tomorrow morning.

The committee adjourned at 1508.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO ENVIRONMENTAL ASSESSMENT ADVISORY COMMITTEE

WEDNESDAY 16 AUGUST 1989

Morning Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Callahan, Robert V. (Brampton South L) for Miss Roberts

Ruprecht, Tony (Parkdale L) for Mr Ballinger

Tatham, Charlie (Oxford L) for Mr Miller

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

Nishi, Victor, Research Officer, Legislative Research Service

Witness:

From the Ontario Environmental Assessment Advisory Committee:

Byer, Dr Philip, Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 16 August 1989

The committee met at 1015 in room 228.

AGENCY REVIEW: ONTARIO ENVIRONMENTAL ASSESSMENT ADVISORY COMMITTEE

The Chairman: I call the standing committee on government agencies to order. Today we are dealing with the Ontario Environmental Assessment Advisory Committee and we have Dr Philip Byer, the chairman, with us. I presume, Dr Byer, that you have an opening statement you would like to make.

Dr Byer: Yes, I do.

The Chairman: You may proceed.

Dr Byer: Good morning. I wish to thank you for the opportunity to speak to you about the work of the Ontario Environmental Assessment Advisory Committee and answer any questions you may have.

The Ontario Environmental Assessment Advisory Committee, which consists of three members selected from outside the government, was established in 1983 to increase public input into the decisions of the Minister of the Environment on what activities should be subject to the requirements of Ontario's Environmental Assessment Act.

This act requires the proponent of a proposed undertaking to follow a planning process that addresses potential environmental concerns. The proponent must prepare a document called an environmental assessment that describes the purpose of and rationale for the undertaking, potential environmental effects of the undertaking, alternatives to it and ways of mitigating adverse environmental impacts. Under the act there is a formal review of this document by both government and the public, and the public may request a hearing on the matter before the Environmental Assessment Board.

The Environmental Assessment Act requires that environmental assessments be prepared for all public sector undertakings, which include projects and programs of the Ontario government, municipalities and other public bodies such as Ontario Hydro and conservation authorities.

The Chairman: Excuse me, Dr Byer. Did you pass these out? Who passed these out? The report from 1 April 1987 to March—

Dr Byer: The annual report?

The Chairman: Yes.

Dr Byer: No. I understand the committee has them, but I will hand them out as part of my opening statement. Do you want that now?

The Chairman: Yes.

Dr Byer: That is not my opening statement, though.

The Chairman: That is fine.

Mrs Marland: Do you have a copy of your opening statement, Dr Byer?

Dr Byer: No, I do not.

Mrs Marland: Do you have only one with you?

Dr Byer: I have my copy that I am reading from. Much of the material that is in my opening statement is covered between the three handouts that I have for the committee. I will start back at that paragraph.

The Environmental Assessment Act requires that environmental assessments be prepared for all public sector undertakings, which include projects and programs of the Ontario government, municipalities and other public bodies such as Ontario Hydro and conservation authorities. However, certain categories of public activities and undertakings judged not to have significant environmental impacts have been excluded from the act. Also, a public sector proponent may make a request to the Minister of the Environment to exempt a public undertaking from the requirements of the act.

Private sector undertakings are subject to the requirements of the act only when specifically designated. Any individual or group may request the designation of a private sector undertaking. The minister's decision to exempt or designate an undertaking is subject to the approval of cabinet.

Some undertakings are subject to what is called a class environmental assessment, which sets out a planning process for a class of undertakings that have common essential characteristics, occur frequently and are relatively minor in scale. Class assessments generally have a provision that gives individuals the right to request that an undertaking be what is called "bumped up" to a full individual environmental assessment. If such a request is made, the minister must decide whether the individual environmental assessment process is appropriate.

1020

Upon receipt of a request for exemption, designation or bump-up, the minister may seek the advice of the committee. The committee then carries out a review of the request and reports to the minister with its recommendation.

In its advice to the minister, the committee comments on the reasons provided by the proponent and other parties for or against the exemption, designation or bump-up of the undertaking. The committee generally considers issues such as the potential environmental impacts of the undertaking, the adequacy of other statutory approvals as a means of addressing environmental concerns, other opportunities for public input and the urgency of proceeding with the undertaking. The committee does not take a position on whether or not the undertaking should be approved. Instead, it determines whether or not the use of the Environmental Assessment Act is appropriate. The committee's report is made public once the minister has made a decision.

The committee also provides, upon request, advice to the minister on other matters such as ministry policies relating to environmental assessment in Ontario. When referring a matter to a committee, the minister may indicate the type of review to be undertaken by the committee. There are three types of review.

There is the open review, where the committee gives public notice of the review to a wide range of interest groups, individuals and government agencies and generally holds a public meeting near the location of the proposed undertaking. The committee requests that comments on the referral be provided either in writing or in person at the public meeting. The committee's advice is normally required within six weeks.

The second type of review is the defined review, where public notice and consultation are limited to affected groups and individuals selected by the minister or by the committee. The committee generally holds a meeting with the affected groups and individuals and our advice is normally required within six weeks.

The third type of review is the internal review, for which there is no public notice or consultation. The normal time for this type of review is two weeks.

The committee maintains a public file for each referral and copies of the committee's reports to the minister are made available to the public once the minister has made a decision on the matter.

The Ontario Environmental Assessment Advisory Committee consists of three part-time members, including a chairman, who are appointed by the Minister of the Environment through an order in council. The three current members are myself, Dr Robert Gibson and Ms Christine Lucyk.

I have served as a member of the committee since October 1985 and was appointed chairman in November 1986. I am an associate professor in the department of civil engineering and the Institute for Environmental Studies at the University of Toronto.

Dr Gibson, who has been a member of the committee since October 1985, is an associate professor of environmental studies at the University of Waterloo. His work has centred on environmental ideology, policy and regulatory issues. He codirected an intensive study published in 1986 of the environmental assessment process in Ontario for the Canadian Environmental Law Research Foundation.

Ms Lucyk has been a member since November 1986. She works for the Coopers and Lybrand consulting group, where she specializes in economic analysis relating to resource management and development. She has broad experience dealing with urban and regional planning.

The committee operates with the assistance of a part-time co-ordinator, part-time researcher and full-time secretary. During the 1988-89 fiscal year, the operating cost of the committee was \$117,000.

Since March 1988, which is the end of the period covered by our most recent annual report, a copy of which you have, the minister has referred nine matters to the committee, including one exemption request, three designation requests, four bump-up requests and a set of legislative changes proposed by the ministry as part of its current review of the environmental assessment process. These referrals are summarized under numbers 31 through 39 on this list which I would also like to hand out. As shown on the list, the committee is currently reviewing three of these matters. In other words, we have reported to the minister on six of those nine matters and it is currently reviewing three of them.

As I indicated, the committee generally holds public meetings to receive submissions from the public. For example, the committee will be holding public meetings next month for all three of our current referrals. I would like to draw specific attention to the value of these public meetings. Not only do they provide an opportunity for the committee to hear from the proponent and the public on specific exemption, designation or bump-up questions, but they also provide important opportunities for the proponent to present the proposed undertaking publicly and hear concerns about it.

In addition to providing advice to the Minister of the Environment on individual requests for exemption, designation or a bump-up, the committee monitors all such requests and maintains a public list of them and the minister's decisions. I have copies of our monitoring list which is also being handed out at this time, I guess. During the 1988-89 fiscal year, the minister received requests concerning a total of 82 undertakings. This includes exemption requests for 32 undertakings, designation requests for 27 undertakings and bump-up requests for 23 undertakings. Of these, three designation requests and four bump-up requests have been referred to the committee.

In addition, the committee may bring matters of concern relating to the environmental assessment process to the attention of the minister. We also submit an annual report to the minister and distribute it to the public. In our annual reports, the committee has commented on concerns about the environmental assessment process in Ontario. In our last annual report, which has been handed out to you, we raised concerns about the handling of designation requests on private sector projects, the timing of decisions, the issue of combined public and private sector undertakings, the use of detailed exemption orders, the relationship of environmental assessment to other statutory approval processes, environmental assessment in northern Ontario and northern development, and the use of the committee.

In conclusion, the committee continues to serve an important purpose as a vehicle for independent and public input into the question of whether the Environmental Assessment Act should apply to particular undertakings, as well as providing advice on other matters relating to environmental assessment in Ontario in order to make this process more efficient and effective for the protection of the environment. Thank you very much.

Mrs Marland: Mr Chairman, just at the outset, may I ask that with all future presentations we obtain a copy ahead of time. I appreciate the work Dr Byer has put into this morning's presentation, but it is very difficult to hear it and not have the hard copy in front of us. I would appreciate if in future we can arrange to have a copy, even if it is just run off while the deputation is speaking. At least we would have it by the time they finish.

Because I have tried to follow you without the benefit of your comments in front of us, Dr Byer, and I listened to the details of some of what you said, can we just get into where you finished, more or less? Can you tell us what constitutes a bump-up request, what it has to be in order to be a bump-up request, to use your own terminology?

Dr Byer: The term "bump-up" is used within a number of the class environmental assessments under the Environmental Assessment Act, so formally a bump-up would be one where the undertaking is already subject to the Environmental Assessment Act. Let me give you an example. It could be a municipal road project that is under the class environmental assessment for municipal roads. There are other class environmental assessments for municipal

projects, such as the class environmental assessment for municipal water. I think the title is water projects.

For the roads, if it a municipal road, such as a widening of a road or a new municipal road, then it would already be subject to the Environmental Assessment Act. But because of this class environmental assessment, it has approval under the class environmental assessment, so the municipality will be undertaking the planning process subject to the requirements of that class environmental assessment. It is a document that describes a process, and typically under these class environmental assessments for municipal projects it is a five-step process, which is to consider alternatives, to look at environmental impacts and so on.

Within that process, there is notification to the public at various stages. After certain reports have been done and the municipality has gone through most of the steps of that class environmental assessment, there is a point where there is public notice. If that notice specifically says within it that if you have concerns you may request the minister to require an individual environmental assessment, you may do so. In other words, instead of this class environmental assessment where the planning is, let's say, not in the same depth as an individual environmental assessment would be, then the public may write to the minister and ask him for an individual environmental assessment to be required. That is where the term "bump-up" is used. It is for a project that is already subject to the Environmental Assessment Act, but it is following the class process. It tends to be fairly complicated.

1030

The Chairman: Who makes the request for the bump-up?

Dr Byer: The public may. Presumably anyone can, any person in Ontario.

Mrs Marland: Okay. The reason I find that answer very interesting is that as the Environment critic for our caucus, I would very much like to see the Ontario Waste Management Corp's proposal bumped up as far as it can go in order to expedite the beginning of its environmental assessment, because of the fact that OWMC has been seven years in the birthing and \$70 million later we are concerned about the fact that we are just starting into the environmental assessment now.

I have not been able to obtain from the Minister of the Environment (Mr Bradley) a commitment that he will hire additional contract staff to expedite the process of the environmental assessment. Every month or every six months, every period of time that project is delayed, the cost increases very appreciably. As you know, we have had Dr Chant before this committee and other committees telling us that. I did not know it was possible for a member of the public to request that bump-up. Are you going to tell me that is a project that—

Dr Byer: If I may, that is already bumped up, as it were, to the highest level, in a sense, which is the individual environmental assessment. The committee has never dealt with the OWMC, so I cannot speak for some of the issues you are raising. However, if we think in terms of three levels, there are projects that do not fall under the Environmental Assessment Act. There are projects that do fall under it. Within those that fall under it, there is the class process which is for generally relatively minor projects. Then there

is full individual environmental assessment for major projects. OWMC is already at that level, which is the individual environmental assessment.

Mrs Marland: So what you are saying is that a project, using OWMC as a very graphic example, is beyond your purview, the purview of your committee.

Dr Byer: That is correct. It is already under the Environmental Assessment Act as an individual environmental assessment.

Mrs Marland: Okay. Looking at your list of exemption, designation and bump-up requests from January 1988, I go to the second to last page. I am using this as an example because it is one I am familiar with, 89-041-D, "St Lawrence Cement Refuse Derived Fuel Facility." If we follow this across, where it says "Date of Request, June 26/89," is that the date the request came to your committee, in order that I can read this correctly?

Dr Byer: That is the date of the letter from the requester, which happened to be St Lawrence Cement. This is a rather strange or different one because the requester is the same as the proponent, so it is the date of the letter from St Lawrence Cement asking for the designation. The minister would have received it that day or a few days later.

Mrs Marland: Right. So this is an example of how the process works. The request may come from a member of the public or the proponent.

Dr Byer: That is right.

Mrs Marland: Can you tell me what that request is, according to your graph, what you mean by "request"? Are they requesting the Ontario Environmental Assessment Advisory Committee to look at their proposal and make either a referral to the minister and designate under which act—is that what happens after you receive that request?

Dr Byer: This is a list of all requests that have gone to the minister or to the ministry for a designation exemption or bump-up. The committee, generally, is not involved in many of these. Here is an example for this one where the committee had no involvement other than to put it on our list which is a public list.

It is typical that what happens is that someone—it could be a government agency asking for an exemption, it could be a private citizen asking for a bump-up or designation—writes to the minister asking for that exemption or designation or bump-up. The minister then sends it to the ministry which sends a copy of that request to the ministry for review and the ministry, which is the environmental assessment branch in this case, sends a copy to the committee. The committee then has its monitoring role to read it, to see if it has concerns, to maintain this public monitoring list and then a decision is made by the minister to either refer that matter to the committee or to grant the designation or the exemption or bump-up or to deny it.

Mrs Marland: When you move across your chart here—of course, it explains the project—then it says "to be designated" under the minister's decision; that "to be designated" means under Environmental Assessment Act or Environmental Protection Act. Is that what that means?

Dr Byer: Under the Environmental Assessment Act. There was a letter dated 26 July 1989 from the minister to St Lawrence Cement indicating that he intended to designate their undertaking to be subject to the requirements of

the Environmental Assessment Act.

Mrs Marland: I see.

Dr Byer: In other words, it is granting the request of St Lawrence Cement.

Mrs Marland: In any of these columns where it says "to be designated" then that means—let's just pick another one where it says "designation denied." For the Sidney gravel pit—I am on page 59—"designation denied" means what?

Dr Byer: I am with you.

Mrs Marland: I am not trying to focus on the individual proponent; I am trying to focus on how we interpret this report.

Dr Byer: That means that 17 February is the date of a letter to the minister from someone or a group asking for this designation. That is shown to be the Sidney Environmental Preservation Association had sent a letter dated 17 February to the minister asking for this designation.

The committee was not involved in that because there is a dash there for EAAC referral. The committee was not involved. The minister sent a letter dated 17 July, I presume, to both the Sidney Environmental Preservation Association as well as to the proponent indicating that he was not going to grant the designation. In other words, he was denying the designation request. So this project would not be subject to the Environmental Assessment Act.

The request was denied so the designation request was denied.

Mrs Marland: That means that it is automatically under the Environmental Protection Act.

Dr Byer: No, not necessarily, because if a project is not under the Environmental Assessment Act, it does not automatically mean that it is under the Environmental Protection Act.

Mrs Marland: Really.

Dr Byer: That would be true for most waste management projects but not necessarily for most of these other projects, or many of these other projects.

Mrs Marland: If the designation is denied, it does not necessarily follow that any proposal will come under any environmental assessment? It may not come under the Environmental Protection Act or the Environmental Assessment Act.

Dr Byer: Most projects that we see listed here would have some government approvals. For example, it might be the Ontario Water Resources Act or the Pits and Quarries Control Act or other regulatory controls.

Mrs Marland: It is funny. I just flipped through these. I see this is Byer—

Dr Byer: No relationship.

Mrs Marland: No, but is it not funny. I just flipped through until I saw one that was designation denied.

Sometimes there is no mandate for environmental assessment other than under some of those other acts. It is still up to the ministry to decide whether the Pits and Quarries Control Act or water management or whatever else is sufficient in terms of dealing with a potential environmental impact of any application.

Dr Byer: My experience for most of these projects, at least the ones we have looked at, and I think it cuts across most of these, is that most other approvals that deal with the environment are mandatory and are followed. In other words, they are clearer, let's say, and there is less ministerial or government discretion in terms of the approvals process.

The Environmental Assessment Act is different in that regard. There are these exemption designation issues, whereas under the other acts, such as the Environmental Protection Act, it is clear that projects are under it or not under it, and those processes follow more regularly.

The Chairman: Do you have more questions? We can move along and you can come back later.

Mrs Marland: I will come back. Could we borrow Dr Byer's transcript, his hard copy, and copy it?

Mr J. B. Nixon: It is straight from this, is it not?

Dr Byer: It is parts of that. Certainly some of the numbers that I have given are updated because that only goes until March.

The Chairman: Could we have that copy? The clerk could make copies.

Dr Byer: Certainly.

The Chairman: Mr Tatham.

Mr Tatham: I will be very short. I appreciate that Mrs Marland asked the question about bump-up, explaining that. We want to look after the environment, but sometimes it takes a lengthy time to get things going. Is there any way we could speed that up?

Dr Byer: I hope so. Most people involved in the environmental assessment process in Ontario realize that there is a need for greater efficiency and effectiveness of that process. The ministry has undertaken a review of the process. It is called EAPIP, environmental assessment program improvement project. That was announced in April 1988. In fact, it is being undertaken in two phases.

The first phase was just announced several weeks ago. I believe it was 3 August that the minister released a report on phase 1, which is some proposed legislative changes—these dates are proposed by the ministry—and he has referred that to the committee for our advice to him on whether he should proceed with those proposed changes or modify them or whatever.

One of the purposes of this review is to try to streamline, to try to make it more effective and efficient. Certainly with inefficiency is time.

I am not answering your question directly perhaps with respect to what we could do, and the reason for that is the committee has not dealt with that. I prefer to deal here in not giving personal advice but rather representing the committee, so I feel a little uncomfortable with saying how we might streamline it with specific suggestions at this point.

Mr Tatham: Maybe this is more of a comment than a question, but I think we should get the mystery out of a lot of this stuff and grade it and say, "Okay, this will go through" or "This will not go through." Maybe there is some way of grading, say, the chances of doing it quickly—"Here is a way to do it"—so that people know when they start how many hurdles they have to go over, because municipalities could go crazy trying to go through all this verbiage. Time is spent.

Dr Byer: I am very sympathetic to that view. I think, to some extent, we have to put this in perspective. The act, while it has been in place since roughly 1975 or 1976, is still relative new. People are still trying to learn how to deal with it and how to go through it, especially since many proponents, whether those are municipalities or government agencies or private sector proponents, often are dealing with unique proposals where each one has to be dealt with slightly differently under the act. They are often dealing with contentious public concerns, particularly in the waste management area. So it is not just the act that is, let's say, the issue here, but all the things the act is trying to deal with, such as the public concerns, that create a lot of the problems with time, such as with the Ontario Waste Management Corp. or other waste management issues, in terms of going through the Environmental Assessment Act. I do not know if you can get around that. I do not know if the act is the issue there or if it is simply these other issues that would exist whether or not the act was required.

Certainly there are aspects of the administration of the act that the committee believes could be dealt with. We have said that we think more resources should be spent on environmental assessment. We said that on, I think, the last page of our previous annual report. I think the ministry has moved in that direction. One of the issues that we have also raised in our annual report is the issue of timing of decisions. We think that, for example, referrals to the committee should generally be made early on so that we can get advice in, so that a decision can be made quickly on whether a project goes under the act or not—this is right at the front end—rather than keep people waiting, as it were, whether it is the public or the proponent. We think, for example, that the government review of the environmental assessment document should be speeded up as much as possible.

The difficulty with all of those things—well, there are lots of difficulties with those things; for example, with the government review. That is not just under the Ministry of the Environment. The Ministry of the Environment will send out the environmental assessment document to relevant government agencies and will ask, "Please, send in your review as soon as possible, by a certain date." If another government agency does not get to it or does not respond by a certain date, then the Ministry of the Environment really has very little power to demand it. Part of this has to do with resources within the government on speeding up the process.

Mr Tatham: Just one simple, small question: Is there any way to establish some rules, regulations or criteria to say: "This is sensible. It will go through"? In other words, in engineering, if the bridge is safe, if you can put a truck over that bridge—can you do that with the environment and say, "This particular action makes sense and it does not need to be referred"?

Dr Byer: To be approved as an undertaking, you just go ahead and build it?

Mr Tatham: That is right. We want to protect the environment, but do we have to go through all that? The road has been there for 100 years. We want to widen the road or put in a culvert or something. Normally, you should just go and do it. We used to, but now we have to go through over these other high jumps.

Dr Byer: Yes, you can do that, and it is being done. I think that is really the case where we have exemptions being given, for example, for projects that formally require an environmental assessment because the act says it applies to all public sector undertakings like certain types of municipal roads. Let's say it is a matter of repaving a road. We would know that in that case we are not interested in having an environmental assessment of the repaving of an existing road. It is known how to do that.

There are other statutory approvals that may be required, or other good engineering designs, so we would not do an environmental assessment for that. That has approval. No environmental assessment is necessary. It might be a project where the minister, after review, says, "Yes, we know how to do it. There are no environmental concerns or they can be dealt with otherwise. We'll give an exemption," as I have discussed.

Most of the undertakings, however, that take time and are difficult are the ones where I do not think we have that engineering knowledge or knowledge about—but they tend to be unique. For example, the OWMC project is not one where we would know how to do it. Any waste landfill site is one where not only do we lack the knowledge—I am speaking as an engineer now—of exactly how to proceed with it, but there is also the major issue that the Environmental Assessment Act brings to it, which is not an engineering issue, which is the issue of site selection consideration of alternatives. That is one where we are dealing with the fact there is no perfect or best site and we have to go through a process to decide what is the best alternative. That is one of the things the Environmental Assessment Act is trying to address.

1050

The Chairman: I have a question. On page 62 of your charts, your list of referrals, I am curious how the referrals get here and how they are handled.

One of them has to do with the Orillia boundary change: "City of Orillia: Annexation by city of land in township of Orillia. Local resident." That boundary change has been approved by both municipalities and by cabinet. Cabinet gave the approval that the boundary change would take effect 1 July. Now you have a local resident who has objected to that. Why is it on this sheet?

Dr Byer: There was a letter dated 5 June and received by the minister. As I recall, it was a fairly short letter with not a great deal of detail. I do not mean that as a criticism, but it did not indicate what you have just indicated, which explained that this person, this resident, was concerned about—as I recall it was the use of prime agricultural—

The Chairman: It is not on there.

Dr Byer: I am explaining why it is on here; the use of prime

agricultural land. In other words, there are some environmental issues that were raised and he asked the minister to require an environmental assessment for it. There was no indication in the letter that that had already taken place. I imagine what will happen, based on what you have just said, is that it is an undertaking that has already proceeded and the minister will write back and simply say that is what happened and it will not be designated.

The Chairman: I was curious how it was done.

Dr Byer: It is a strange one.

The Chairman: He does not live in either. He objects to what goes on in every municipality. I was just curious, after all the facts and the cabinet approved it, how you would go through all this here; how it would get on. Are there others that are on your charts here that are probably the same?

Dr Byer: No, I think you have picked one that is—it is possible that citizen did not know that that change had already been approved by cabinet.

The Chairman: He objected to that too.

Dr Byer: It is possible.

Mrs Marland: He must be a Liberal.

The Chairman: He is a farmer. Mr Breaugh, you are next.

Dr Byer: I think that is a rather unique one.

Mr Breaugh: Many of us are kind of advocates of the notion that this advisory committee should be used more, but I have to admit that it is very confusing as to what the hell is going on here. For example, even in asking the simple question of our own staff, "Are you doing more business or less?" it is very difficult to make that judgement call.

If you look at it from one point of view, from the year 1987-88 you made only two recommendations. Not that anybody has to do anything about that, but if that is your measure of productivity, you did not do much. You did have more requests. It is difficult for us to kind of gauge, is this agency busy? Are they being used a lot? How effectively are they being used?

As you went through the various explanations of your business schedule, it gets even more confusing as to how things arrive on your plate and how you deal with them. It is intriguing and kind of attractive to note, as you go through that, that our Environment critic and other members of our caucus are able to bring matters to your attention, and so is any other citizen, but when you look at whether that does any good, you do not actually get a quick answer to that. It may be a formal, public process that is opened up; it may not be. You may give a decision, but nobody may or may not pay any attention to a decision that you have given.

My difficulty is many things, but what I am concerned about is that I think we have reached the stage where we know that everything we do, public or private, really needs some kind of environmental assessment. We could probably say there are fiddling little things about somebody putting a porch in his backyard that is not worthy of note here, but if that porch is St Lawrence Cement Co building a big dock on Lake Ontario, yes it does, so maybe we can

sort that out.

The bottom line, though, is that we do not really have any assurance that a major environmental assessment process will go automatically under way on a major public project. We put forward a tremendous amount of time and energy and expertise in determining not whether it is going to have a big impact on the environment, but whether we will have a discussion about whether it has a big impact on the environment. That is my concern.

As you go through the list here, there are a number of projects which some would consider to be not really important. For example, Ruth Grier put in a request concerning the redevelopment of what is called the "motel strip" on Lakeshore. What that really means is that a big chunk of the Metro waterfront is going to be redeveloped. I think we would all agree that that is the environment you are talking about. The designation has some qualifications on it, but we are not sure of what we are doing here. It almost seems like the rules get made up for each individual project.

One other point I would like to get in early is that I am a little perplexed. I am attracted by the notion, first, that any citizen can write to you and the end result could be a better environmental assessment process, but that is not necessarily a public process. You advise the minister. He may or may not take your advice. We are offering a bit of an illusion here. Perhaps in our going over of how we do this, one of the things we might strive for is to make it clear what you can and cannot get, and that is not clear now.

I would be interested in your comments on whether we would be better off with one agency that does this, rather than having two laws and different processes involved. I am admitting, I guess, that I am confused by the process. At the end of a fair amount of analysis now—I listened to you explain it this morning and it strikes me that you know what you are talking about, but you sure as hell have to think about it before you explain it to us. That is not a good sign. I would be interested in your comments on that.

Dr. Byer: I sympathize with you listening to me. Actually, one of the explanations I gave on the class environmental assessment was that it is a difficult process to describe to people without concrete examples. I apologize if I did not do a better job on it, but I would like to make something clear because of something you said.

The public does not write to the committee. In this list here, people may write to the committee, but really people write to the minister to ask for an exemption or designation or bump up. The committee has no power to undertake any review unless the minister refers it to the committee, and our major function is to carry out those reviews and make a recommendation to the minister. That is our reason for really being there.

We have this other important task, this monitoring task, which is the reason we have this list here, and it is the only place in government where the public can get a list of what is going on in environmental assessment with respect to exemption, designations and bump-ups; plus the fact of having an independent public committee there to do this monitoring, where we can and do have discussions with the minister and minister's office about what is going on and we have at least an overview of what is going on, so that we can help advise the minister on these issues. I hope we will be getting involved in that more under this review of the environmental assessment process. I just wanted to clear that up about how the committee gets involved.

I take the second part of your question to be: How do we make these decisions? If you look at the numbers, particularly the numbers you had in this previous annual report, although in my statement I indicate also what is happening, most exemption requests are granted, by and large. Very few are denied. Most designation requests are denied and not granted. That by itself does not mean anything, because they may all be quite appropriate decisions. There is an effect of weeding. Most government agencies I do not believe would ask for an exemption unless they thought it was reasonable and there was a good chance they would get it and that there were good environmental reasons to get the exemption.

1100

But the committee has a concern about the process for making these decisions. We think we are an important part of that process, but we also think we have been underutilized. I think that has picked up, and the recent history and the future look better. I am hopeful.

With respect to designation requests, though, there is no right under the Environmental Assessment Act granting the public the right to request a designation. The act simply indicates that the minister may designate, and therefore the process has come that people have written to the minister.

One of the concerns I have is that that has a lot to do with who happens to be in the local area; who may even know that there can be a designation. There may be many projects that are environmentally significant and nobody writes to the minister to ask for a designation. It may need environmental assessment or should have environmental assessment. There is no right under the act for people to get a designation. The process is that they can write, but it is not necessarily a well-known process.

The second aspect of designation for private sector undertakings is that there are no guidelines or policies for dealing with it, and the committee has concerns about that. When the committee deals with a designation request in providing advice to the minister, we have our own criteria, in a sense, and I have gone through some of those in my opening statement about adequacy of other statutory approvals, opportunities for public input in other ways, environmental significance—that, of course, is the key—and urgency of the undertaking.

We have our own criteria, but we wish the ministry had criteria for dealing with designation or, better yet, would look at the question of designation of undertakings not on an individual basis but in a broader context. Again, I think one of the items under this environmental assessment program improvement project is to look at the issue of designations. So I am hopeful that—

Mr Breaugh: Let me pick up on a couple of things. One of the things I find most disturbing is that we are not well served when we have laws on the books that are not clearly understood by our citizens. Every time we have an array of interpretations that are not done publicly, we leave ourselves vulnerable to those who might want to exploit them.

I have this concern and, frankly, I am not really sure how to deal with this: I know of projects where one person has written to the minister and caused something to be delayed for two years. I wish I could tell you that I thought the one person was thoughtful, had some knowledge and was seriously concerned about the environment, but I also know of occasions when the one

person was just angry at somebody, did not like someone on the local council, did not like the project; and out of spite knew, for whatever reasons, that a letter to the minister's office could stop something for a couple of years. I have no objection to them getting that out of their system, but it costs you and me a lot of money every time we hold this up, and very often the services are necessary.

I think we have to deal with that whether we are infringing on the individual's rights or not, but really I have difficulty justifying the notion that an individual can cause all of this to happen by writing you a three-sentence letter that goes through the minister and the minister says, "We'd better do something about this." I think we have to address that.

Second, I would like to see your agency used a great deal more, simply because it seems to me you have thought about this process a fair amount, but you are stuck there as an advisory committee to the minister that functions when the minister chooses to use you, with a set of rules or criteria that are not really publicly established. You have them; you have thought about them; but none of us know, for example, what they are. I imagine that our conversations here will elicit some of those. Even though you have good credentials and good intentions, it is not a good public process to have you saying, "We have our own little criteria, but they don't really have any status in law and the minister doesn't have to use them unless he or she sees fit."

I am interested in how much of this you think would be helpful, for example, in the recommendations we might put forward, to the cause of environmental assessment in general if we sought to clarify your role, sought to expedite the process that was clearer for you to play in this. I know the name of the agency is that you are there to advise the minister, but the reality is that you do a good deal more than that and you are in a position to do much more than that.

I would be interested in your thoughts on what kind of directions this committee should take in our considerations about your agency. To be blunt about it, do you want your agency to have a more clearly established, beefed-up role in all of this, or are you content to just be an adviser to the minister at his discretion?

Dr Byer: There is not an easy answer to give to your question, because I am caught between personal—You see, we are all part-time members.

Mr Breaugh: In a sense, that is part of the beauty of it. The fact that you are not full-time civil servants gives you a great deal of credibility and impartiality. You are not part of the system that is going to be proposing and approving all of this.

Dr Byer: No. It is pretty clear. I was being somewhat facetious, but it is, really. From an environmental point of view, and all committee members are environmentalists, whatever that means, it is clear to us that when the committee was set up originally in 1983, the expectation was that the committee would be used more.

I have always felt that if exemption, designation and bump-up requests can be dealt with expeditiously and correctly without the committee, please do it. We tend to get involved in the exceptional circumstances. The motel strip you mentioned is an example of that. I think all the referrals we have gotten from the minister have been excellent ones, in that I have not objected to

say, "That should never have come to the committee"; but based on the reason the committee was set up, I think we should be used more.

That also then puts more onus on the committee to perhaps change some of the ways it deals with things. For example, we cannot take on a great deal more work than, let's say, we have right now; we are dealing with three referrals right now, and that is the limit of what we could do at any one time unless we changed, and I think we may have to do that.

Instead of going that direction—in other words, many more referrals, and the committee may be getting more members or dealing in different ways with them—my hope is that this environmental assessment program improvement project will deal with it in some other way. Some of the preliminary things they are thinking about are possible major changes to both legislation and administration of the act that may satisfy these problems; if it can be done without the committee, please do it. I think we are in a transition period.

I should indicate that some of the things being looked at under this EAPIP are use of the committee in different ways; that is one of the options being looked at.

The Chairman: You will be advocating more full-time help?

Dr Byer: Not right now, but if we had more work, if we had more referrals.

The Chairman: You are saying that you have all you can handle now.

Dr Byer: That is right, if we had more referrals. Because the work of the committee is at the discretion of the minister, I cannot really take on full-time help because I cannot have people sitting in the office waiting for referrals. What I do is hire the best part-time people, and I have excellent people, to be able to come in as needed. It presents problems, but we have been able to deal with it so far.

Mr Breaugh: Just one final little question here and then I will let you go for other members to ask their questions.

1110

We have developed a process whereby things can be stopped. I am not convinced that we have developed a process yet whereby things can be assessed, changed, altered in some way and proceeded with. To take one that is on your agenda quite a bit, landfill sites in various areas, people are really grasping at straws about stopping particular kinds of protests. Everybody is going to lay down in front of the bulldozer, everybody is going to jam the local council meeting, they are going to stop that landfill site no matter what, but we do not have much of a process under way to figure out where these things are going to go and how we accomplish them. We have a process in place to stop things. That part of the process appears to be working. We do not have much of a process in place to assess things. That part of it seems to be missing. How do we get from the one to the other?

Dr Byer: I am glad you asked that, because it opens the door for me to say the environmental assessment process could be that process; not to stop but to proceed. The committee feels very strongly, and if I leave you with one thought it is that part of the problem—I hope this does not sound silly—is that people do not embrace environmental assessment. I am now sounding like a

preacher for it.

There are problems with the environmental assessment process in Ontario. We are not questioning that. I think everybody recognizes that all of these processes can be improved and there is a process going on hopefully for dealing with that.

I think one of the problems we have is that under environmental assessment many of the proponents do not embrace it as a way of solving their problem. It sets out a process for proceeding; it is not a process for stopping. Unfortunately, if it is viewed as a process for stopping, it can be used as a process for stopping. I think that is the way you are seeing it and that is the way a lot of people see it.

I think what is needed, therefore, is for people within that process to be able to proceed with the right frame of mind, let's say, to use it as it should be used to make decisions. I am not talking about ministerial decisions; I am talking about decisions of proponents about how to proceed within that process, because most of the process is under the control of the proponent, not of the minister or the ministry.

Only after the environmental assessment is submitted to the ministry does the government take over in the sense of a government review, a public review and a possible hearing before the Environmental Assessment Board. Much of the process is up front in developing the environmental assessment, in making the decisions of: What do you want to do? Where do you want the landfill? How have you gone about addressing your alternatives and doing the environmental studies? Once you have done that it goes into the government, but the quality of that work up front is what greatly dictates the length of time it takes to get through the process. So if somebody has done a good environmental assessment and has done it the way it is supposed to be done and involved the public, then hopefully that process, once it gets to the government, will be much shorter.

That is what should happen, but if you have people who want to stop things, then that is a right of the public, to object. They do not like the landfill in their backyard. Whether the Environmental Assessment Act was there or not, these people would still address that issue. I do not think it is the act.

Mr Breaugh: I do not have a problem with anybody registering his objections. My anger and frustration is that in my area we built two of the world's largest nuclear facilities without any public environmental assessment, to speak of, at all. That angers me when I compare it with the fact that if any one of my municipalities wants to build a gravel road it is going to have to do that. We are going to go through an environmental assessment process to find out whether we should run a GO train on existing railroad tracks, because one person wrote a letter. I have a system at work that is not doing what I really want it to do and I am frustrated by it, I guess.

The Chairman: Before I get to the next questioner, I do not know whether you can answer this, but it relates to the question I asked you previously with regard to the letter that was sent to you. Why would the minister reply to the municipality, the city of Orillia, and indicate, "You can't do anything until we have looked into this investigation," when it has been approved by cabinet, everything was done accordingly and now the municipality is sitting there waiting for a letter from the ministry? How can

that happen?

Dr Byer: I am afraid I cannot answer that. I do not know. As I said, the only knowledge I have of that particular undertaking was the one letter. The ministry sent a copy of that letter to me, as it is supposed to, to inform us that there has been this request and we have summarized it in this way.

If the undertaking has already gone ahead, and this is true whether it is a boundary change or a landfill, then to my knowledge I do not see how the Environmental Assessment Act could be brought to bear once an undertaking is already in place. It is possible the minister did not know that.

The Chairman: I thought he was in cabinet.

Mr J. B. Nixon: I am sorry. I had to leave the room briefly because of a telephone call while you were addressing one of Mr Breaugh's questions. You referred to a study that is taking place of the entire environmental assessment process. Is that within the Ministry of the Environment?

Dr Byer: It is centred within the Ministry of the Environment. It is called the environmental assessment program improvement project. However, it involves most government agencies that are involved or have some dealings with environmental assessment, such as the Ministry of Natural Resources and so on. They have input into it.

Mr J. B. Nixon: Are there any public hearings, public presentations or solicitation of public views on that matter? I am not suggesting there should be; I am just wondering if there is.

Dr Byer: A major feature of this project is and will be public consultation. It is in two phases. Phase 1 is to deal with relatively minor, simple—I am not sure if they are that simple—quick changes that can be made. That is phase 1 and that has just been announced. That was announced on 3 August, the proposed changes. These were proposed by the ministry and now the minister wants to get comments from the public and he is involving my committee in that public consultation process. There is this public review period or consultation period for that.

Phase 2 is proceeding and material from that will be coming out later for public comment. In addition, there is what is called a public advisory group that is part of this. It consists of about 25 people from the public, who meet regularly and receive information on this. They have input to this process.

Mr J. B. Nixon: I have heard, like all of us, the various competing interests, such as the need for timely decision-making, the need for more thorough work at the environmental assessment branch—which means more resources, which means spending more taxpayers' money—the paramount goal of protecting the environment and so on.

I am trying to think of solutions or recommendations that we can make as a committee. I suppose our work is a bit pre-empted by the fact that this environmental assessment program improvement project is taking place. I do not know how much weight will be attached to our recommendations, given that there is this public advisory body with 25 people sitting on it and public consultation taking place.

In any event, one solution that came to my mind is why not just merge

your committee with the Environmental Assessment Board and just have it as one optional preliminary step in the process?

Dr. Byer: Actually, that is one of the options being considered. In fact, all possible options are being considered, but one I have seen in a draft paper as part of this EA improvement project is a combined agency, which would be a sort of combined advisory committee and assessment board.

There is some question and difficulty in terms of some details, I think important details, so that it is not just one body. Let me explain that.

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If you were to take my committee and just merge it with the board, the problem would be that here is a committee that is, first, looking at an issue and whether or not it should come under the Environmental Assessment Act. Should you have that same committee and the same people then actually dealing with that undertaking, there might be some question of fairness involved there.

But those are details that could be worked out, and I have no problem with working out those details. In fact, a major option being considered is one agency to help deal with this. One term that has been used is "committee of experts," to help identify what projects should be under the act, help with the scoping of projects, identify what issues, what alternatives should be dealt with under the act for a particular undertaking.

These are a number of things that are being looked at, and I am quite hopeful. Any suggestions you have that can feed into that process would be quite important, and of course any proposed changes would be coming to the Legislature at some point, I presume.

If I may, because you have mentioned that, the environmental assessment program improvement project is not the committee's. The committee is involved in it and we have a referral on it. I have copies of the minister's release and our notice indicating how we are dealing with phase 1 of that. I am quite happy to pass that on to you for your information.

The Chairman: Just leave them there. We will get them.

Mr. J. B. Nixon: Just a comment on the issue of fairness that you raised. It is certainly an issue that is raised in the court system in Canada and in England. But in the United States, some of the more progressive states have decided that the ultimate fairness is the right to a speedy trial and a speedy decision. That overrides any lesser issues of fairness as to who is appropriate to be making decisions on preliminary matters, as opposed to the final matter of the file.

In some of those states, they say the trial judge is the judge who decides all issues relating to that piece of litigation; whether the writ is in proper form, whether the preliminary motions, discoveries, questions and issues being raised are properly dealt with. That ensures that the thing gets dealt with quickly. He can also take into account things like—I am speaking by way of analogy—whether that lonely individual has any merit to his case in the environmental assessment process or whether he should be thrown out, disregarded and perhaps penalized with some requirement of contributing to the costs of the process.

Only when one person or one body has that view of the entire process

from beginning to end can it make those types of decisions. I just suggest that to you for what it is worth.

Mr Ruprecht: I will be making my remarks in the context of not being a member of this committee. As you know, I am substituting for Mr Ballinger.

The Chairman: You will be speaking on Mr Ballinger's behalf, will you?

Mr Ruprecht: That is right. I was going to apologize to the committee, but since I have been here I have listened to members who are confused. Some said the item was not very clear. Someone asked Dr Byer to explain one item that has been of particular concern to me for a number of years.

As of nine o'clock this morning, I think the dock workers at Liverpool have rejected the shipment of polychlorinated biphenyls, and it most likely will return to Canada. As far as I know, the only site that has been approved by a province and the government of Canada is the site in Alberta. They have now said that they may not even accept the shipment and the burning of the PCB substances in Swan Hills, Alberta.

Looking at the report of the committee you have given us, Dr Byer, should these substances come under our jurisdiction, and I think they most likely will, because we probably have thousands of tonnes in many locations in many ridings—I know that previously the Ministry of the Environment had given consent to burning PCBs in mobile units, meaning they would go to local sites wherever they may be stored, drive in with a mobile trailer and begin to burn these PCBs.

My question then would be: If such a policy were to be re-evaluated or to reappear, how would the environmental assessment advisory committee act under those conditions? I am referring to page 2 of the annual report. Would you or the ministry, or the minister himself in this case, make a decision to call for an open review, a defined review or an internal review; or what, if any, recommendation would the committee be making to the minister?

Dr Byer: Would this be with respect to—

Mr Ruprecht: Mobile units.

Dr Byer: As I understand it, and this is an issue the committee has not dealt with, these are units that have been approved already.

Mrs Marland: Yes, they are licensed and approved already.

Dr Byer: So this is not an issue that would ever come to the committee.

Mr Ruprecht: That is my question. Let's assume that you are correct and that they are approved.

Mrs Marland: Two years ago.

Dr Byer: Under the Environmental Protection Act, as I recall.

Mr Ruprecht: Right. Then the mobile units would go into different locales. Why would they not come under a review, because there would be

certain conditions attached to the burning of these PCBs? Having read the previous report on this, one is that the burning mechanism must be so many metres or feet away from stores, community centres, living quarters, bakeries, or rivers and streams. I suppose my question would still stand. In other words, would you or the advisory committee not advise the minister on the kinds of review that should be taking place? You would not be in the position, if I understand you correctly, to advise the minister at all about the assessment?

Dr Byer: First, let me clarify. The reviews that are there—open, defined and internal—are the type of reviews we undertake to decide whether or not the Environmental Assessment Act should apply. In the case you are dealing with or a more general case, whether it is the PCB burning or anything else that has some environmental significance, it is possible for a member of the public—Let's say the mobile unit, which is approved, as I understand it, is coming into a certain area; someone from the local area could write to the minister and say, "I object, notwithstanding its having approval, and I think it needs an environmental assessment." That could happen and then the minister would have to deal with it.

One way of dealing with it would be to simply say, "It's already gone under a public review." It was, as I recall, a lengthy public review under the Environmental Protection Act, with a public hearing, for the licensing of those, the approval of that technology and so on.

Mr Ruprecht: But not site-specific.

Dr Byer: That is right. As I say, anyone could write to the minister and ask for a designation—I guess that is what it would be called in that case—under the Environmental Assessment Act. He could say, "It already has approval for the following reasons," and he will not designate it, or he could refer it to the committee, or he could, of course, say he thinks it does need an environmental assessment without referring it to the committee. He has choices. If you are asking how the committee operates, I am sure in that case, if he were to refer that issue to the committee, we would most likely hold an open review where we would go into the local community, have a public meeting, look at the adequacy of the approvals that have already been granted.

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Take the criteria we work with, for example. Is the environment protected by the process and the approvals that have already been granted? Would the Environmental Assessment Act help? Would it aid in decision-making in that particular case? It would also look at the urgency, of course, because one of the issues, at least with regard to PCBs, is the question of storage where they are now or burning. We would also hear submissions on the urgency of going ahead with the burning, because we know that environmental assessment would delay that. Again, you are raising an interesting case but one we have not seen. It is possible.

Mrs Marland: Could I interject at this point?

Mr Callahan: Interjections are out of order.

Mrs Marland: A supplementary, if you would like me to use the proper language.

The Chairman: If you have a supplementary, I will accept it. A

supplementary to this question?

Mrs Marland: A supplementary to Mr Ruprecht's last question about mobile destruction facilities for PCBs. The reason it is a very important question is because the development of regulations and subsequent approvals for licensing mobile destruction facilities for the burning of PCBs was a very lengthy process. It took about two to three years to develop those regulations. I happen to know about it because I was intensely involved. As someone who had stopped the burning of PCBs at St Lawrence Cement in my municipal ward, against the Conservative government in 1977, I come a long way with that subject.

Mr Ruprecht: I remember that plant. We took a lot of—

Mr Callahan: What happened? Were you seconded or what? How did you end up—

The Chairman: Interruptions are out of order. Mrs Marland has a very important question.

Mrs Marland: The question is interesting, because once it was established by the provincial Ministry of the Environment that there could indeed be mobile destruction facilities as long as they were licensed—and those companies would not receive their licences unless they met the then new government guidelines to protect the environment in order for them to operate—

The Chairman: And the question is?

Mrs Marland: When it came to the question of site specification, Dr Byer, that was taken care of, as I understand it, in the regulations. If you were to operate a mobile destruction facility for PCBs, you had to meet the regulations to operate it, and those regulations themselves inherently protected the environment no matter where they operated in the province. The site specification was a question that was addressed by the regulations. That is why I find Mr Ruprecht's question this morning very interesting. Your answer is that it is still possible, even with government regulations and licensed, approved facilities, for an individual to object to something that meets all the government approvals. It gets back somewhat to the point Mr Breaugh was making.

Dr Byer: Obviously people can write to the minister if they have concerns about anything. You think you are confused about the Environmental Assessment Act; most people in the public have a great deal of difficulty understanding the Environmental Assessment Act versus the Environmental Protection Act and so on. It is perfectly understandable, because it is a complicated issue for people. But people can write to the minister and say, "I want an environmental assessment on this undertaking of approved PCB destruction in my area," thank God, and ask for that. The question is, what does the minister then do with that request?

From the point of view of the committee, we would treat it as a designation request and our responsibility is to monitor it. The minister has the responsibility to deal with the decision. He may say, "It's already approved because of this lengthy process that has gone on and we have regulations and so on." He may do that, or he may, for any approved undertaking, refer it to the committee if there has been a request for an environmental assessment.

We can go through this list on designations and many of them would already be approved in the sense that they would already meet all other government approvals, but that still means there is a possibility for the minister to designate.

The Chairman: Is there any PCB burning taking place now?

Dr Byer: In Ontario? I am afraid I do not know the answer to that.

Mrs Marland: The answer is yes.

The Chairman: How many portable units are there?

Mrs Marland: There are four firms that are currently licensed, as I understand it, and Ontario Hydro owns one of those portable destruction facilities.

We just had a situation in Mississauga South where we had a burning of PCBs at the Ontario Hydro Lakeview plant. What concerned me was that the very aspect of portability, the fact that you eliminated the transportation and you did it in the local area—Under the regulations, in my case, Hydro brought PCBs from other locations to this one location to make it economically feasible to set up to do that burn.

I asked all of those questions at the time, because naturally, being part of the input in forming the regulations for mobile destruction, I thought, "Why are we going to amalgamate a big burn in one location?" I am really being a little unfair when I say a big burn; it was just a protracted burn. Why did they not do what we had at Lakeview and then go to Kipling or the other Hydro locations and do the burn there?

The answer is yes, we are burning PCBs today in Ontario with mobile destruction facilities under the existing government regulations.

Dr Byer: It goes back to Mr Breaugh's question. In the case of PCBs, there has been a lengthy review, as Mrs Marland mentioned, under the Environmental Protection Act and not under the Environmental Assessment Act. A concern of the committee is that there are many environmentally significant undertakings going on that do not get anywhere near that type of environmental scrutiny as did the PCBs. We have large sectors of types of undertakings, such as mining undertakings and others, under which there would be no Environmental Protection Act approvals, or Environmental Assessment Act or many other types of acts. That is an area that the committee is concerned about. In other words, there are areas where the minister is receiving designation requests for which there had been very little of environmental approvals, and that is of concern to the committee.

Mrs Marland: Can you just make a comparison, a fair comparison? In your opinion, is a mining approval possibly comparable to destruction of PCBs?

Dr Byer: The government approvals process?

Mrs Marland: No, you said there are approvals that give the committee concern because they are not subjected to the environmental process, and you brought that up in relation to what we were just saying about PCBs. Can you give a comparison that would be equal to the public concern about burning PCBs versus the public concern, environmentally speaking, about a mining operation?

The Chairman: What we have to keep in mind here is the work of your committee. What does your committee do in that line?

Dr Byer: It is relevant, because the committee has been concerned about the large number of designation requests the minister is receiving, and one of the sectors for those has to do with northern development, mining. Pits and quarries is another area where the minister has received a number of requests.

My comment was that the PCB destruction has gone through a lengthy hearing. We are pleased with that in the sense that we know there have been environmental approvals there, whereas there are many other areas, such as mining activities, some of which can have very major impacts on the environment in their areas, that do not receive the same type of environmental scrutiny that the PCB destruction one received.

Mrs Marland: I see what you are saying.

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Mr Callahan: I have a couple of questions. First, you are not a member of the board established under the Environmental Assessment Act, are you? Your group is probably set up under clause 32(g): The minister has the power to "appoint committees to perform such advisory functions as the minister considers advisable." I understood you got your authority from ministerial appointment plus Lieutenant Governor's approval. Is that right? Are you appointed by order in council?

Dr Byer: Yes.

Mr Callahan: Where in the act does it provide for you being appointed by order in council?

Dr Byer: Clause 32(g).

Mr Callahan: No. It says the minister can appoint you. It does not say anything about requirement of order in council; as it does, I might add, in things like 32(f)—that requires Lieutenant Governor in Council approval; as it does in 32(i); and as it does for all of the members of the board per se. I do not think there is any authority in the act for requiring approval by the Lieutenant Governor.

You also indicate that your committee does not take a position on whether or not the undertaking should be approved. Yet I have looked at some of your decisions in the fifth annual report. For instance, at page 4, under referral 21, you say, "The committee had recommended approval of the class EA, provided a number of conditions were included in order to ensure environmental safeguards and adequate public involvement."

At page 5, under 26, five lines down, it says, "The committee recommended approval of the proposed policies provided that minor changes are made to address a number of specific concerns." A similar thing under 27.

Am I misreading what you said, that you do not take a position on whether or not the undertaking should be approved?

Dr Byer: There is an explanation. We are both right, in the sense that when we are dealing with exemption designation and bump-up requests, the

committee does not take a position on whether—

Mr Callahan: So it is only on the—

Dr Byer: It is on the others. For example, if it is a policy matter, we would recommend on a question of approval. The first one you referred to, the supplementary report on referral 21, was unique. We were almost acting like the Environmental Assessment Board in that case, providing advice to the minister on the actual approval of an environmental assessment. The ones you are pointing out are not exemption designation and bump-up requests.

Mr Callahan: When your board sits, do you tell the people who come before you what the nature of your authority is and what influence, if any, you have on the decision?

Dr Byer: Yes, we do. I hope we are clear to the public on that. We also send out a copy of an information sheet to them and certainly give them copies of our annual reports. We try to make it clear to them what we are dealing with and what our powers are in making recommendations to the minister. As well, another important issue is that our reports are confidential until the minister has made a decision. We try to make all of those points clear.

Mr Callahan: I am inclined to agree with Mr Breaugh. I think this is a good idea, but I think its availability in terms of knowledge to the public is very limited. I did not know anything about this until I came on this committee in the last couple of days.

Each of the members on this, with the exception of Ms Lucyk, are associate professors at universities?

Dr Byer: Yes. There are only three members of the committee.

Mr Callahan: Does that require full-time work at the university?

Dr Byer: Yes.

Mr Callahan: When do you get time to do this?

Dr Byer: Nights, weekends and all my spare time.

Mr Callahan: Your qualifications are certainly considerable, all three of you, but that may have an effect on how much available time you have to do these things.

Dr Byer: That is true.

The Chairman: I understand that you hire other professional people when you need them. Is that not correct?

Dr Byer: Yes, we have support for the committee, and that is very important, it is necessary. But as I said, if the committee serves a useful purpose, which I think it does, and if it is used in cases where it should be used, if we are busier, then we will have to deal with it. It might be internally or it might mean, for example, more members. Right now, we try to have all three members go into public meetings in dealing with each referral. On a recent referral, we had only two of the three. If we become busy, we will have to have more members, use two of the three of us or have different

internal ways of working on these referrals. It will be an issue.

Mr Callahan: One final item. I have only quickly looked through the Environmental Assessment Act, but do I understand that this act does not in any way refer to private matters? It is just public bodies.

Dr Byer: Well, it is very brief. Clause 3(a) says it applies to public bodies. Clause 3(b) says it applies to "major commercial or business enterprises or activities or proposals, plans" and so on, "only on and after a day to be named by proclamation of the Lieutenant Governor," and that has not occurred.

Mr Callahan: So there is no date? It has never been proclaimed.

Dr Byer: It has not in its broad context for all; however, it has been for individual undertakings. If you turn to another section, in section 40, I think clause (e), it says, "The Lieutenant Governor in Council may make regulations...designating any proposal, plan or program or any class of proposals"—and so on; in other words, a private sector undertaking—"as an undertaking or class of undertakings to which this act applies."

So there are two key areas here with respect to the private sector: one is this date under section 3, and section 40 is the one that has been used, for example, for St Lawrence Cement—based on the earlier question—where the minister has indicated that he will designate that St Lawrence Cement resource-derived fuel facility; that would fall under 40, I believe.

Mr Callahan: Just so I understand it, because I have looked at your list of referrals under January 1988 and some of them obviously are not public bodies: As it has never been proclaimed by the Lieutenant Governor, and I presume section 40 would not be done by cabinet until the minister had decided that it was a matter of concern—

Somebody writes the minister. The minister may or may not refer it your board. If he does and it is a private concern as opposed to a public body, you then hold a hearing. You submit your findings to the minister, and if the minister decides it is a matter he wants to have go on to the Environmental Assessment Board, then he would proceed under clause 40(e) to obtain cabinet approval or Lieutenant Governor approval to bring it under the terms of the act. Is that how it works?

Dr Byer: Actually, I am not sure if it is under clause 40(e) or 40(d), but under section 40.

Mr Callahan: In any event, it requires some action on the part of the Lieutenant Governor, because he has not proclaimed the date it would apply to private proposals—

Dr Byer: It would be a regulation going through cabinet.

Mr Callahan: Can you show us any example of where that—

Dr Byer: Where it has actually occurred? Steetley landfill, Flamborough township. That is 88-068-D.

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Mr Callahan: I see. So that is the regulation, then, 283/89?

Dr Byer: That is right.

Mr J. B. Nixon: Just so we are clear—and I am probably going over old news—what Mr Callahan has done is outline a set of circumstances that support the conclusion that you are purely advisory; you do not have any statutory powers of decision, and your decisions are not reviewable in the courts by anyone.

Dr Byer: That is correct.

Mrs Marland: On page 62, to get back to St Lawrence Cement, where it says "to be designated" as opposed to "designated;" that "to be designated" means it can be designated either under the EAA or EPA.

Dr Byer: I am sure the minister's letter said it would be designated under the Environmental Assessment Act. I presume the reason it had not gone to cabinet yet was that there is work to be done in preparing the proposed regulation. He is saying that he intends to designate it. Obviously, it must still go through cabinet.

Mrs Marland: "To be designated" means he is recommending.

Dr Byer: That is right.

Mrs Marland: So to be designated means always under the EAA. I did not understand that when we started.

Dr Byer: That is right. Anything in this table deals with the Environmental Assessment Act, not the Environmental Protection Act or the other acts. We are dealing only with EAA in terms of exemptions and designations.

Mrs Marland: You have "Minister's Decision" and then "Date Public," 26 July 1989. What does that date mean?

Dr Byer: That is the date on the minister's letter.

Mrs Marland: I see. To whom does that letter go?

Dr Byer: In that case, it was to St Lawrence Cement.

Mrs Marland: That is a public letter, so anyone could get a copy of that letter.

Dr Byer: Yes.

The Chairman: Our researcher has a couple of clarifications he would like to get clear on one of Mr Nixon's questions.

Mr Nishi: First, on Mr Callahan's question regarding where the authority comes from for the agency: In clause 32(g) the minister is allowed to appoint committees. Then the procedure for the appointment of the committees is through the Management Board guidelines. In the Management Board guidelines, it states, "It is quite in order in some cases to establish an agency by regulation or by order in council pursuant to a specific Ontario statute," which would be the Environmental Assessment Act. In fact, many advisory agencies are established in this way. That is where the line of authority comes from.

Mr Callahan: That might be Management Board's regulations, but does that have the effect of law? Is that a statute? If it is not a statute, it does not have any authority whatsoever.

Mr Nishi: "Pursuant to a specific Ontario statute," so the establishment of the agency is in the statute under 32(g)---

Mr Callahan: That is a policy you are reading from.

Mr Nishi: The establishment of an agency is in the statute; it is in the Environmental Assessment Act, then the procedure by which that agency is established is outlined in the Management Board guidelines.

Mr Callahan: But the Management Board guide is not a statute of Ontario; it is a policy of the government of Ontario.

Mr Nishi: True.

Mr Callahan: So it has no force or effect.

Mr Breaugh: Why are you challenging the legitimacy of this agency? I assumed it was legitimate.

Mr Callahan: I am not, but it just strikes me that if we are looking at cleaning up the act, we should clean that up.

Mr Breaugh: There is a lot more to be done if we want to clean up the act.

Mrs Marland: Bob is being very thorough.

Mr J. B. Nixon: Bob suggested to me in conversation that although it may appear to be, at first blush, just cleaning up some technical details as to who has proper authority, it leads to very serious problems, because in some cases the guy who writes the letter to object and delays things is effectively the tail wagging the dog.

These guys, in utmost good faith, may try to deal with that objection or request for designation or bump-up or whatever as expeditiously as possible, but it is all done with no real legal authority. Someone has put his finger in there and is stirring things up, and no one else can get in and pull that finger out or put right whatever he is messing up. This body just sort of exists and no one knows who runs the show. I do not mean that critically of the individuals involved at all, but legally, once it is in there, unless the minister goes in and gets it out, it is in there.

The Chairman: That same person could put it in the EAA too, can he not?

Mr J. B. Nixon: Yes.

Mr Nishi: There was another point that fell out of a number of questions that have been asked about the general procedures and trying to streamline the whole environmental assessment process. I wonder if you might comment on your information about the federal process. I am thinking specifically about the establishment of the Federal Environmental Assessment Review Office as a quasi-independent arm of the Department of the Environment, working with the Department of the Environment but acting

independently, to help shepherd proponents at the earlier stages, as you sometimes do; shepherd them from the earlier stages right through the FEARO process. Are you familiar with the FEARO process at all?

Dr Byer: I am not familiar enough with the federal process to want to comment on it here. It is quite different from Ontario's, but it is also in transition. My understanding is that the federal cabinet is looking at substantial changes to that process.

The Chairman: Thank you. We have a couple more on our list, and there will be some this afternoon. This may be an appropriate time to adjourn for lunch. We would be pleased to have you back at two o'clock this afternoon.

Dr Byer: My pleasure.

The Chairman: Thank you. The committee is adjourned till 2 pm.

The committee recessed at 1200.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO ENVIRONMENTAL ASSESSMENT ADVISORY COMMITTEE

WEDNESDAY 16 AUGUST 1989

Afternoon Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Callahan, Robert V. (Brampton South L) for Miss Roberts

Ruprecht, Tony (Parkdale L) for Mr Ballinger

Tatham, Charlie (Oxford L) for Mr Miller

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

Nishi, Victor, Research Officer, Legislative Research Service

Witness:

From the Ontario Environmental Assessment Advisory Committee:

Byer, Dr Philip, Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 16 August 1989

The committee resumed at 1415 in room 228.

AGENCY REVIEW: ONTARIO ENVIRONMENTAL ASSESSMENT ADVISORY COMMITTEE
(continued)

The Chairman: If members would take their seats, we could proceed with the evaluation of the Ontario Environmental Assessment Advisory Committee. I am sure that Dr Byer has more things he would like to enlighten us on and some of the committee members probably have some questions they would like to ask.

Mr Tatham: I was talking to Dr Byer after we broke, but if I may just make a comment: I was warden of our county for three years and we spent 11 years and \$2 million trying to achieve a safe landfill site. The frustrations we went through to achieve that were great. I am just trying to establish whether it would make sense for some method being achieved to locate safe landfill sites from a technical point of view and let the local politicians come in later on. That is more or less the question to the doctor, whether he would care to comment on it, because that would certainly move along some of these fears we have had. We have seen people find an arrowhead and say, "That is where there was an Indian burial ground," or we would find something else, and everybody had some pet thing with which they were going to stall progress. I just wondered if comments could be forthcoming.

Dr Byer: First, you are taking about the general issue of environmental assessment and environmental approvals and I should make it clear that that is not part of the mandate and issue of the committee.

Mr Tatham: I appreciate that.

Dr Byer: I am quite happy to go on with some comments that the committee might have about that, because we certainly have to deal with some of that when we look at some of the issues. I will just go on briefly about that.

The question that comes up is: What does the Environmental Assessment Act add to other approvals, because what you were talking about are technical approvals, let's say for example under the Environmental Protection Act, which would look at the adequacy of a liner for a landfill, of litter control and things like that. Then the question comes in, why add environmental assessment on top of those technical approvals?

Some of the fundamental things that environmental assessment does beyond those other approvals is to require the consideration of alternatives such as recycling, incineration and alternative sites, whereas other approvals do not require those. The Environmental Assessment Act also requires opportunities for public consultation that are not required generally under the other acts. Third, the Environmental Assessment Act adds a broader definition of the environment to be considered than exists under the other acts. The definition of the environment within the Environmental Assessment Act is not only the natural environment but also the socioeconomic environment, for example. It is fundamentally different.

Then the question becomes whether or not approvals should be conditional upon consideration of these other things—in other words, on issues other than the so-called technical issues—such as the alternatives, impacts other than what we might consider to be the traditional pollution or environmental pollution-type impacts. I think the answer is yes, the public demands it, and the Environmental Assessment Act is simply a reflection of what the public is demanding in terms of what is to be considered for making decisions about these types of undertakings. I have tried to put that into context.

On the other hand, you raise the question of time and delay. I do not think there is any question that people—and I include opponents, the public opponents and proponents—would like to see a more streamlined process that still achieves the same thing. How we get that is going to take an awful lot of thought from a number of people about the political end as well as the technical end. I am afraid that is all I can really add to it. I have no magic bullet or solution for that.

The Chairman: I have a couple of questions. Who sets the salary of the staff you have on your advisory committee?

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Dr Byer: The full-time secretary is in the civil service, which is a classified position. That salary is set by the ministry.

The co-ordinator for the committee, who is on an as-needed basis, meaning part-time—when we are busy she is full-time; when we are not busy she is not full-time—is an unclassified position. I am afraid I am not clear on some of the administrative details, in terms of what they are called, but her position category, AM-15 or AM-13—I would have to check on what her classification is—has been set in consultation between me and the ministry about what her responsibilities are. Then her salary, her hourly rate, falls within that classification.

The third person, the part-time researcher, is hired on a tendered contract basis.

The Chairman: Of the \$88,000 budget for 1987-88, what part of that would the three commission members get and how many days would the commission members work in a year?

Dr Byer: In that year? I gave your staff a detailed breakdown—I think you have it—which shows the per diems for three years, and I can add the last year to it if you want. Do you want it for 1987-88 or 1988-89?

The Chairman: Both.

Dr Byer: For 1987-88, the per diems were about \$21,000; for 1988-89, about \$18,000.

The Chairman: That is fine.

Dr Byer: I can let you know, if you wish, what that means in terms of number of days. I could do a rough calculation now.

Mr Runciman: What is your daily per diem?

Dr Byer: The daily per diem for the chairman is \$225 and for the two members there is \$150.

Mr Runciman: I have a supplementary to Mr Tatham's question, which I originally thought was dealing with landfill sites, was it not? This may have been raised earlier with respect to your referral list, referral 29, "Policy on exemptions for interim expansion on municipal waste landfills." I see you were able to complete your review of recommendations to the minister within two weeks on such a significant matter. That strikes me as a rather quick response. I wonder if you want to comment on that.

Dr Byer: We had a previous referral on that. I will have to get the number for you. Let me just make sure I have this correct. You are talking about referral 29?

Mr Runciman: Yes.

Dr Byer: I guess you do not have referral 26 as part of that package.

Mr Runciman: No, we start at 28.

Dr Byer: Referral 26 was—I am sorry; that is not the correct one. We had two referrals on that environmental assessment policy, so I just have to get it straight. The previous one was in January 1986 or January 1987.

Mr Runciman: So what you were doing in 1988 was reviewing the recommendation you made in 1986?

Dr Byer: We did an original recommendation. Here it is: interim policy, referral 24. The date of the referral was 13 November 1986 and we reported to the minister on 22 January 1987. That was our first review of a ministry draft policy.

Mr Runciman: Is that recommendation public knowledge? I notice this one is not.

Dr Byer: Yes. On 24 the report was made public, a few weeks later in January 1987.

Mr Runciman: Can you summarize what the recommendation was at that time?

Dr Byer: Yes. I can give you a copy of it, if you would like.

Mr Runciman: Fine. I wonder if you could highlight it in a couple of sentences, if that is possible.

Dr Byer: We recommended on the basis of that first draft—I will just summarize it; this is our recommendation on that first draft in 1987—that a policy should be further developed to be applied to all exemption requests by municipalities for the interim expansion of existing municipal landfill sites. We agreed with the idea of a policy. We thought it was a good idea.

However, this policy should include a set of criteria which must be met before an exemption is granted. An exemption would be granted to a municipality under the policy if all of the following criteria were met, and then we listed a number of details. It goes on for about probably 10 or 20 different specifics and so on.

Mr Runciman: And the minister accepted that recommendation at that time?

Dr Byer: The minister then made our report public and asked the ministry to redraft the policy. I do not know what his instructions were to the ministry with respect to our report. The policy was redrafted trying to address the issues and concerns we raised. Then a new draft policy came out in March 1988—it was still internal—and the minister asked us to conduct an internal review on that. It did not take that long, because we had already done all the research and the discussion on that. It was a matter of reviewing that new draft policy on the basis of our previous referral.

Mr Runciman: You reported to the minister 23 March 1988.

Dr Byer: That is right.

Mr Runciman: It is almost a year and a half and it still under consideration. Is that sort of delay unusual?

Dr Byer: I do not know whether it is unusual. It raises concerns for me and the committee, and I have written to the minister about this very recently, within the last month, basically asking why it had not yet been approved and when it would be approved.

Mr Runciman: You have not received a response to this point.

Dr Byer: It was very recent. In fact, the date of my letter was either 31 July or 1 August. It is not unusual not to have had a response quite this quickly, but I expect to hear a response from the minister on this.

Can I follow up on that for a minute, because you are raising this and the committee is concerned about where that policy is, because we think a policy on this issue should be made.

It is my understanding that a number of municipalities are being advised as to what that policy is, at least in draft form, and they are being advised to follow that because it will be made and coming forward. We are simply asking that if that is the case it be actually signed and put out more formally. So that is where our concern comes in.

Mr Runciman: Rather an unusual way to proceed.

Mr Velshi: We have asked Dr Byer to give us some information on what would make it easier for them to function in terms of the time frames; he mentioned to us that if this Environmental Assessment Program Improvement Project is in place. I wonder if it would not be wise for us to consider inviting them over one of these days to consider what process they are going through now. A lot of the things we are questioning here are not being answered and I do not understand why.

The Chairman: That could happen. I do not know what the opinion of the doctor is with regard to that, but it is something this committee could probably consider. Maybe what you are looking for is his comment on whether he thinks it would be a good thing for us to do.

Dr Byer: I will leave that to your judgement.

The Chairman: I have a question to ask. It is in my area and I was interested. It is 89-013-B with regard to Mara township quarry mining truck route. My understanding is that there has been an assessment done, and I do not know who has done it. I guess some consulting firm probably did it. Did

they send that report to the ministry and then does it go to you for assessment or evaluation? How does that get on this report?

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Dr Byer: I will try to keep this brief. The process there is that this is a road; the proposal was to construct part of the new road. Therefore, since it is a municipal road, it falls under what I described before, the class environmental assessment for road projects. It was what is called a schedule C within that class environmental assessment; I will try not to confuse you any more than you probably are already about that.

As part of that class EA process, it required that an environmental study report be done. That was done by a consulting firm. Then the process is that the environmental study report is made public. It indicates what the proposal is, why it was chosen compared with other alternatives, what the environmental impacts are and so on.

At the same time as that happens, there is a notice to the public that indicates that if you would like an individual environmental assessment, you may write to the minister for a bump-up. That is what I described before.

That is in fact what happened in this case. The committee did not know anything about it until some local citizens from Mara township wrote to the minister saying, "We would like a bump-up for the following reasons."

The ministry notified the committee, as it is supposed to, about those requests. That is how it got on the list here; that would have happened in February. Then the minister referred the matter to the committee on 31 May. The committee held a public meeting up in Brechin, in Mara township, some time in June, heard public concerns and did review that environmental study report to see whether an individual environmental assessment would have been warranted. Then we made our recommendation to the minister on 10 July.

The Chairman: So it would take some time now before the minister would deal with that matter?

Dr Byer: My hope is that the minister will deal with that very quickly. I have no control over what happens. If you want to know more about the process that goes on, typically what would happen is that while we report directly to the minister and our report usually goes to the environmental assessment branch within the ministry, which reviews our report and then makes a recommendation up to the minister, my understanding is that for that particular case that has not gone from the ministry—in other words, the environmental assessment branch—up to the minister yet, and I am concerned about that.

The Chairman: I know the municipality is very concerned and would like to get on with the work.

Dr Byer: My suggestion would be for them to call the minister's office.

The Chairman: As some of the questioners on the list missed their turn—

Mrs Marland: Oh, really.

The Chairman: We could revise it. I think Mr Tatham had a question.

Mrs Marland: I did not rush in, but I was on the list.

Mr Tatham: Go ahead.

Mrs Marland: No, Charlie; after you.

Mr Breaugh: Margaret, why do you not go ahead?

Mr Tatham: Beauty before age.

Mr Callahan: Angels rush in where fools fear to tread.

The Chairman: The record will show that Mrs Marland was a little late coming, I am sure.

Interjections.

The Chairman: Mrs Marland has the floor.

Mrs Marland: I do not know why everybody else's attendance time is not shown for the record, Mr Chairman. I was not the last to arrive this morning, as I recall.

I wanted to ask you, Dr Byer, and if you have already answered this question I will read it in Hansard, did you describe the difference between the three kinds of reviews? I wanted to know the difference between internal, open and defined. If you have already answered, do not answer it again; I will read it in Hansard.

Dr Byer: In my opening remarks I explained the three; they are also indicated, of course, in our annual reports.

Mrs Marland: If it is in your opening remarks, that is fine.

We have been handed an additional piece this afternoon which is from Pamela Wheaton. It is a breakdown of the budget figures, and I did have a question on the budget figures. On page 9 of Mr Nishi's report, under "Services" on page 9, it lists \$43,256 for services. Now that I have this breakdown, I can see a further detail of those services. Is the \$21,000 for per diems the panel members' per diems or is it other services? Have you a copy of this?

Dr Byer: Yes, I have. The per diems are for the three committee members.

Mrs Marland: Okay, that is fine.

Dr Byer: Actually, if your committee would like, I have an amended version here that simply adds the last fiscal year. Would you like that?

The Chairman: Perhaps you could read into the record the last fiscal year.

Dr Byer: There are a number of items in the column.

Mrs Marland: Do not worry. Just to have it will be fine for my

purposes in asking the question. I am glad somebody anticipated my questions from this morning.

Mr Nishi's other report, which is the graph of the number of referrals, is a single-page report. Do you have that one?

Dr Byer: I do not believe I have that. No, I do not have it.

Mrs Marland: Does anyone have one they can lend him? I think this morning, Dr Byer, you mentioned that there were nine matters that had been referred to the Ontario Environmental Assessment Advisory Committee. I assume that is for this year.

Dr Byer: That is since April 1988.

Mrs Marland: So this graph that I have just given you, the breakdown for 1987-88, would be until April 1988. Is that it?

Dr Byer: That is correct. I am sorry; I did not do this graph so I do not know. Is that—

Mr Nishi: Through the last annual report.

Dr Byer: Through the last annual report that is available.

Mrs Marland: So the anniversary date is April.

Dr Byer: That is right.

Mrs Marland: Then dealing with the current year, we are dealing with nine matters having been referred to the EAAC, is that right?

Dr Byer: That would cover about one and a half years. That would cover not only the latest complete fiscal year but up to today, actually.

Mrs Marland: Okay.

Dr Byer: If you would like the number for the fiscal year 1988-89, I can give that to you in a second.

Mrs Marland: Okay; thank you.

Dr Byer: You have it on one of the lists I gave you, the summary list, the list of referrals. The last fiscal year, the fiscal year 1988-89, would be referrals 31, 32, 33 and 34, so that would be—

Mrs Marland: Four.

Dr Byer: Thank you; four. That is right. Since then, in the current fiscal year, we have had five to date.

Mrs Marland: Really, in 15 months we are talking about a total of nine.

Dr Byer: That is right.

Mrs Marland: I am just making note of the fact that you have a

full-time secretary. I am not questioning the salaries; I am just looking at the operation of the EAAC.

I listened carefully this morning. You did say this morning that you think you have been underutilized. It would seem to me that while you also said that you had no guidelines or criteria for designation, you wished you had that. The fact that the committee has had to develop its own—in other words, your workload is irregular at best, I think, because obviously there may be some part of some year when the matters that are referred to you may all be referred in three months. I am quite sure these nine matters that have been referred to you are not referred to you evenly throughout your 12-month year, and your necessity for a full-time secretary—I recognize that is the only person who is full-time—that person is there because that is the only continuum of stability of staff that you have.

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Dr Byer: Well, there is an incredible amount of paper flow through the office, as I am sure anyone in government knows, and that comes from two sources. I am answering why we have a full-time secretary and need one. The paper flow is amazing to me sometimes and it is due to two sources. One is with respect to the monitoring function, maintaining the public list and keeping the committee informed of the exemption designation of requests that come into the ministry. We need to be kept informed, as a committee, about this and maintain this public list. This is a requirement, by the way. Maintaining this public list is a requirement of the committee.

Second, there are of course the requirements of the government, and whether you have a small committee, a large committee or a committee that is very busy or not busy, I regret that there are many things we must do to satisfy the requirements of government with respect to paper. If you can solve that problem, I would be quite happy to hear that.

Mrs Marland: I am very sympathetic to that problem. Is one of the requirements of your committee that everything you produce is in both languages?

Dr Byer: There is no legal requirement for that.

Mrs Marland: No.

Dr Byer: However, the committee maintains—in fact, I can give this to you—our practice is to provide certain material in both languages, for example, our last few annual reports. If I can submit this to you—I only have one copy—it is a French version of the annual report from 1987-88. Similarly, we have a bilingual version. I also submit this to you. It is bilingual in one version for our annual report.

We also maintain a description of the committee explaining what the committee is, and we do that in French and English. Otherwise, we deal with it on a referral by referral basis of whether or not to put out a French notice for our public meetings. To date we have not had a request to do that. We have provided a translator at one of our public meetings because of a request, but to date we have had no requests.

Mr Runciman: It is a commonsense approach. Unusual.

Mrs Marland: Generally, you are functioning totally in English and on a request basis you will give the service in French.

Dr Byer: That is correct.

Mrs Marland: But you have been directed to have your annual report published in both French and English.

Dr Byer: We have not been directed; we have chosen to do that.

Mrs Marland: Okay. You have chosen to do it. This office at 1 St Clair Avenue West—

Dr Byer: It is now at 65 St Clair Avenue East.

Mrs Marland: Is that where one of the ministries is?

Dr Byer: We are on the seventh floor and we share that floor with another branch of the ministry, but we have our own separate office.

Mrs Marland: Yes, but you are in space the government rents for another ministry.

Dr Byer: Yes; provides.

Mrs Marland: That is what I was wondering.

Dr Byer: On the French issue, the notice, for example, was distributed to you on the environmental assessment phase 1 review. I think that was passed out. The public notice on there, for example, indicates that that notice is available in French. What we try to do on French is make it clear that people can get services in French, but we do not, unless we have reasons otherwise, publish or present the information.

Mrs Marland: It is just an area I am interested in because my constituency office, more times than I would choose to acknowledge, receives government publications—unfairly, I could qualify this as a government publication—but we receive them only in French, and this is in Mississauga South. There is a big mixup at the moment, I think, with where the French is required and where it goes. Sometimes through a mistake you get French when you only need English. There is a tremendous cost to that.

Dr Byer, like everyone else this morning, I too must say that I am impressed by your own personal curriculum vitae. I think, obviously, that we are fortunate to have someone with your background and expertise in that position.

I wanted to ask you about this, when your the minister asked your committee to conduct the internal review of the proposed policy for the Environmental Assessment Act exemptions. According to your annual report, in the second-to-last paragraph on page 7, apparently you were asked to do that on 8 March 1988. Now, because I have not read any further than that in this report, can you tell me whether that internal review has been completed?

Dr Byer: I believe I just answered that. I am quite happy to answer it again.

Mrs Marland: No, you have answered it; it is fine. So it has been completed?

Dr Byer: I was answering that to Mr Runciman's question earlier.

Mrs Marland: That answer was just dealing with the proposed exemptions for the EAA. I will go to another question.

On the long list of exemption, designation and bump-up requests, on page 43, the first two at the top of that page are for Ontario Provincial Police buildings. I think these two must demonstrate what Mr Breaugh was talking about this morning. I should not have said that but on the surface—obviously the Minister of Government Services has requested the exemption in this case—it seems so frivolous that all of this process would have to take place at all for the sake of an OPP building. Why would an OPP building even have to be considered for environmental assessment?

Dr Byer: I have a good answer for you, which is that other people have recognized that question, including the Ministry of Government Services which does not handle the environmental assessment branch, who do not like to have to go through this process. I would have to get the exact dates, but somewhere around a year and one half ago the Ministry of Government Services requested that the minister review this issue and made a proposal.

There was a proposal from the Ministry of Government Services to the Ministry of the Environment on a proposed policy on how to deal with all activities of the Ministry of Government Services within the Environmental Assessment Act; in other words, under the act, to try to clarify this issue of what is in, what should require environmental assessment and what should not. I am quite happy to say that the minister referred to the committee that matter of addressing exactly the type of question you are raising. That was our referral number 31 that you have in the summary.

The subject was the application of the EAA to all activities of the Ministry of Government Services. That includes land management activities as well as construction. It is a whole range of activities. The ministry had a proposal. The committee reviewed it and had a public meeting on that. It was an open review as you can see. We submitted a report to the Ministry of the Environment on 5 December 1988. The report is still with the minister and the ministry and therefore our recommendations are confidential. However, I can give you some update on that, which is that the Ministry of Government Services has been in discussion with the Ministry of the Environment on this issue and the Ministry of Government Services has a copy of our report, or if not a copy, at least it knows what our concerns and recommendations were and has submitted to the Minister of the Environment a new exemption request, which is called a program exemption.

Let me clarify that. It is an interim program exemption. The Ministry of Government Services is proposing to undertake or develop a class environmental assessment process for its activities, and while it is developing that it is requesting a program exemption for many of its activities, which would mean that it would not have to come to the minister for each of these individual items. I can indicate that that request is 89-033-E on page 60 of our request list, which describes it. That is public information.

1450

Mrs Marland: Which would certainly make sense.

Dr Byer: As you can see, there are a number of activities that the minister, with the committee's help, I hope, is trying to use to deal with some of these issues.

The Chairman: That leads me into a very important question, if I may, Mrs Marland.

Mrs Marland: As a supplementary to mine?

The Chairman: The minister has directed you, by 13 October this year, to bring in a report of recommendations with regard to phase 1 of the realignment and you are going to hold public hearings. Where are you going to hold those public hearings and how many public hearings do you anticipate you will need in order to get the public input?

Dr Byer: Public input can be made to the committee in two ways, either written or oral submissions, and oral submissions of course would be at a public meeting. As shown in the notice, which I hope you have, and I believe you have in that package, we will be holding a public meeting in Thunder Bay on 19 September and in Toronto on 20 September.

The Chairman: Those are the only two that will be held?

Dr Byer: Those are the only two that are planned to be held.

The Chairman: Maybe it was something else I was thinking about, but was there not a large sum to go to some seminar? This is totally different. This is "oral submissions at public meetings to be held at the following locations" with regard to the job that you have to do and that is to look at upgrading how the Environmental Assessment Board works.

Dr Byer: I am sorry. I must have missed part of your question.

The Chairman: You are supposed to be looking at improving the effectiveness and efficiency of the environmental assessment program.

Dr Byer: Yes.

The Chairman: I am wondering how that is going to take place other than with public meetings. What changes?

Dr Byer: Our referral on phase 1 of the environmental program improvement project is based on the report the ministry has submitted to the minister for the proposed changes. In other words, there is a set of proposed changes. The committee is to make recommendations to the minister with respect to either acceptance of them as they are proposed, modifying them or deleting them. Our referral on that and our public meetings will be based primarily on those recommendations. I hope I am not being presumptuous, but if the question of the committee was more open-ended, two meetings would not be enough. I think you are absolutely right. But this is a narrower review in that respect.

The Chairman: Any further questions from the members?

Mrs Marland: Yes. I am still continuing. I allowed you that supplementary.

The Chairman: I have some others on the list and I was wondering how much longer you were going to be.

Mrs Marland: I am not finished.

You have mentioned a number of times that you hold public meetings on those matters that are referred to you. Is it safe to assume you hold public meetings on most of those matters that are referred to you or do you have criteria for holding public meetings?

Dr Byer: As a matter of practice, we have held public meetings on almost all of the referrals. We cannot hold a public meeting if it is an internal review. But you can see from our list—it is the part I have given, and you have some other information—that at least in the recent past—The last time we had an internal review was referral 29, which was March 1988; about 10 referrals ago, if you will. Our internal reviews are very infrequent. The committee does not encourage it. We believe we exist primarily as public input; our view is that there should be some overriding reason for an internal review.

When there is an open review or a defined review, we almost always hold a public meeting. There would have to be some exceptional reason why we would not hold a public meeting in those cases; then that is the committee's decision.

Mrs Marland: It is the committee's decision whether or not you hold the public meetings. Who decides whether the review is internal, open or defined?

Dr Byer: The minister does, but our working relationship with the minister is that we want them to discuss it with us beforehand, if possible. I guess I can summarize by saying it has not been a problem yet, because we consider open and defined reviews fairly similar; under the defined review the committee can identify whom it needs to contact, so if we feel we need to contact everybody, it becomes an open review. In practice, defined and open are not that different, depending on how the committee wants to operate.

This is rather important, I think: The minister can give us an internal review, but our memorandum of understanding with the minister—I have copies of this, if you wish—indicates that if he gives us an internal review or identifies it as an internal review, the definition for that is:

"In exceptional circumstances the minister may require the advice of the committee respecting a matter only requiring an internal review. Should the committee consider consultation is necessary for this review, the minister's approval will be sought."

If the minister has an exceptional circumstance where he wants it as an internal review and the committee disagrees with that, we will go to the minister. That has not been necessary yet.

Mrs Marland: To get back to your public meetings, I have plucked this one out on page 39 of your long list. There was the matter of a river, a Hydro development in Thunder Bay—I cannot pronounce the name of the river.

Dr Byer: Kaministikwia.

Mrs Marland: That was a matter which was referred to you. In an example like that, would you be holding the public meetings in the locale?

Dr Byer: Absolutely, and we did.

Mrs Marland: To get back to something I know has been discussed, but I would like to discuss a little further, because it bears relevance to internal review versus open or defined: When you deal with 29 on your list of referrals, "Policy on exemptions for interim expansion of municipal waste landfills," that probably has to be—It is the first page of the short list of referrals; item 29, the second item down.

That item has to be one of the most, if not the most, sensitive areas or issues or responsibilities to come before the Ministry of the Environment in the last number of years, because of the problems with waste management that so many municipalities in Ontario face today. Therefore, it is a problem each one of us faces; as legislators, certainly each one of us shares the responsibility for the solution.

First, I was impressed when I looked at this list to see that it was referred to you on 8 March and you dealt with it within two weeks.

1500

Dr Byer: Do not be too impressed. This addresses an issue I answered before, but if I can clarify it, I think it is important.

This is the second referral we had on this matter. For referral 24 dated 13 November 1986, which I am afraid I did not include there because it is covered in our previous annual report, an initial draft of the policy was referred to the committee. The committee reported to the minister on 22 January 1987, so that was about two months. I just want to make it clear; we are efficient, but not that efficient.

Mr J. B. Nixon: For a thorough discussion of this matter, refer to Hansard.

Dr Byer: So this was a second review of a further draft of that policy.

Mrs Marland: That is why you were able to have the turnaround time within two weeks. From this report, it is clear that your recommendations have been with the minister since 23 March 1988.

Dr Byer: That is correct.

Mr J. B. Nixon: For a thorough discussion, refer to the previous Hansard.

Mrs Marland: The decision to have this subject as an internal review was—To be clear, I understand that is a decision made by the minister.

Dr Byer: That is correct.

Mrs Marland: Based on your experience of being on this committee now for three years—

Dr Byer: Almost four.

Mrs Marland: When you are dealing with a policy exemption, you are really dealing with a policy formulation as well, because it is obviously what you are looking for down the road. I am trying to ask you this diplomatically, because I do not really want to put you on the spot. Maybe I should divorce it from that example.

Are there times when the minister decides on an internal review, but now, based on your almost four years' experience with the environmental assessment advisory committee—Do you ever turn around and say to the minister or his staff or whomever it is you deal with, "Based on our committee's experience, we would like to hold public meetings on this"? I think that is the best way to ask you.

Dr Byer: I do not think that has ever been a problem. We have very few internal reviews, and, as I recall, in the cases where we have had internal reviews, we have been in agreement with them.

If I can explain on this particular case—I think it is a good example—our first referral on this matter, on the exemption for interim expansion of landfills, the one late in 1986, referral 24, was a defined review, in which case we actually turned it into, I would call it, an open review. I do not recall whether we had a public meeting on that; I do not think so, but we certainly sent a notice out and asked for submissions very broadly. I do not think there was any difference in that referral from how we would have handled it if it had been an open review.

When it came back to us in March 1988 with a new draft, I felt comfortable with an internal review. A defined review would have been fine, but I think it was adequate for an internal review for the following reason. The committee's original report had already been made public, which was unusual; the minister released our report on referral 24, which we had made on 22 January 1987, to the public on 30 January 1987. When the committee had the internal review in referral 29, we made it clear that what we were doing was reviewing the new draft on the basis of our previous recommendations.

What would have been gained by having a defined or open review there would have been for us to explicitly ask the public for comments on our own recommendations; that may have added something. However, at the time we had referral 29, where we dealt with it as an internal review in two weeks, we were told there was some urgency to respond quickly.

Mrs Marland: The greater integrity of your committee pivots only on your arms-length relationship to the ministry, because you are really representing the public; you are that body the public is looking to put its faith in because you are not the ministry. That is why I have to ask you whether you do make recommendations that may be contrary to the sense you have received from the ministry on any matter.

Would it be possible to get from you a list of the people from whom you asked for public comment in your defined review back in 1986 or 1987, and also that report in January 1987?

Dr Byer: Typically our reports have some information in them about who was notified. I am afraid in that case it may be rather difficult to get a complete list of all the names, but it would certainly give an indication of how broad—

Mrs Marland: The body.

Dr Byer: Yes, the type, and I can give you more information on that. If it is all right with you, I will start by sending you a copy of that report for referral 24, and then if you wish further information, you could contact our office. We will do what we can. Sometimes our report includes as an appendix the actual names and addresses of everybody who has been notified. Sometimes it is only who has made a submission. I am unclear about that.

Mrs Marland: That would be great, because like the chairman, who asked some specific questions this morning, I have a specific interest in the role your committee may have played in the fact that the region of Peel has just been granted an exemption for their interim site. I am trying to establish on what grounds the region of Peel's interim site may have been exempt. I am wondering whether that exemption would have been referred back through the EAAC as an example of the process you are involved in.

Dr Byer: I cannot comment on that particular exemption. Unless it is in our list, I do not recall that one. If it occurred, it would be in our list and I would know more about it, but I just do not recall all of them.

Mrs Marland: Is it possible that after you have had input into this report, particularly the report on interim expansion of municipal waste landfills, if you have now been part of the formulation of whatever that new policy would be—It is just as we were talking about this morning: Once it has been approved to burn polychlorinated biphenyls with a disposal facility, the regulations are there and the approvals are reviewed only by those people who are responsible for licensing the facilities for PCB destruction. So if we are looking at exemption for interim expansion of municipal waste landfills, your committee would not necessarily know about Peel, because you have been part of the report that has set the game rules for those exemptions. Is that it?

Dr Byer: No, that should not be the case. I would feel very strongly if the ministry used that as a reason not to inform us. Each exemption would still have to be given individually. What this draft policy would do, which we are all in favour of, would be to set up the ground rules for when an exemption can be given. That still means each municipality would have to go to the minister for an individual exemption and the committee would be notified of that and the committee could still be involved in getting referrals to decide whether or not the exemption meets the policy.

The Chairman: Only if asked by the minister.

Dr Byer: In our view, the committee might be used less, though, because if the policy is clear, which I hope it will be, then it will be clear whether a municipality meets the policy or does not meet the policy.

Mrs Marland: What is interesting about Peel, I think, is the fact that—Bob, maybe you can correct me if I am wrong—from what we have read, the exemption for Peel was just announced about 10 days ago. It was in the press; in fact the wording was that the Premier (Mr Peterson) had granted the exemption to the region of Peel. I pricked up my ears and wondered: It is interesting that it was the Premier granting it and not the Minister of the Environment (Mr Bradley). I also wondered what the game rules were.

Dr Byer: Is this for the Metro contingency site?

Mrs Marland: No, really, it is not.

Dr Byer: Oh, this is a different issue.

Mrs Marland: It is not the greater Toronto area, but it is two things. It is an extension to the existing site in Peel and it is the approval for an interim site in Brampton, which is now exempt from the full Environmental Assessment Act.

Dr Byer: If those were exemptions, then the committee—

Mrs Marland: Should know about it.

Dr Byer: But there is usually a lag of several weeks, so if the request only went in to the minister within the last few weeks, the committee, presumably, would not know yet. We would be notified shortly, because sometimes it takes three or four weeks for the committee to know about some exemptions. I am not sure what you are referring to though, because I am aware of a letter that the Premier sent to at least one of the regional chairmen concerning the contingency site, the interim site. If that is the one you are talking about, I am aware of that. Otherwise, I am not quite sure what you are referring to.

Mrs Marland: I understand that even though a policy exists, all exemptions to the full process of the Environmental Assessment Act still have to go through your committee.

Dr Byer: We have to be notified of the exemption requests and decisions on them. The minister does not have to refer the issues to us.

Mrs Marland: Okay. You could be notified after a decision has been made.

Dr Byer: That is correct.

Mrs Marland: I understand.

Dr Byer: However, if I can make this clear, the understanding that we have with the ministry, because it is the one who actually notifies us, is that it is to notify us relatively promptly. So the only reason—and this is happening in a few cases but not many—where we hear of both the exemption request and the decision at the same time is where the time has been very close.

Mrs Marland: Is there anything else, Dr Byer? When we start to draft any recommendations we may have about the environmental assessment advisory committee, and I think you were very specific this morning about a couple of things, is there anything else that you would see your type of committee doing, albeit as necessary with added panel members or committee members, or any other areas in which you could better serve the public of Ontario on environmental protection issues?

Dr Byer: With respect to simply the role of the committee, obviously, there are many things I would like to see with respect to changes in the Environmental Assessment Act process. I am not being specific but I think we all recognize that there are needs for that. But with respect to the committee, I hope I did not state that I necessarily wanted more members. I am simply indicating that is one of the possibilities.

Mrs Marland: No, I am saying that, because obviously if you are

given a whole lot of new issues and new work, you are going to need more bodies.

Dr Byer: That is true.

Mrs Marland: That was me saying that.

Dr Byer: I think the committee is running well now, except for one area, which is the question of when do we get referrals and when do we not get referrals. Along with the lines that there is a general need for policies with respect to environmental assessment, such as what goes under environmental assessment and what does not, there is also a general need, I think, within the ministry, not necessarily as a stated policy but at least some sort of working guidelines or process that I hope would be public, for when the committee gets referrals. In other words, on what basis does the committee get referrals and when?

We have expressed concern, not only about the utilization of the committee. As I indicated, I think we are much better now in the last six months and I would like to make that clear. One of the reasons for that is that the committee raised this issue with the minister. He understands our concerns and I think we are seeing a change, so any statement you may make would be quite appreciated, but the minister has heard that and I think is taking it quite seriously.

In terms of the work of the committee, that is one area in terms of numbers of referrals—not numbers, but appropriateness of referrals. Whatever we get is appropriate, we believe, but there are others we are not getting that we believe would be appropriate for us.

The second issue which I think is a problem is one of timing. We have raised a number of times that referrals to the committee have often come too late, that it would be much better for the process as a whole if the referral was made earlier. Again, I think movement is being made on that and this is an evolutionary thing. In terms of our dealings with the minister and the minister's office, we would prefer to see referrals to us as early as possible in the process.

Mrs Marland: Thank you for your frankness.

The Chairman: A very excellent question and some good answers. It certainly brought out a lot of facts with regard to EEAC. Are there no further questions from the members?

We want to thank you very much for appearing before us. It was certainly excellent and we hope to be able to have a report. If there is anything you can think of that would help us with our report that would make it better for the committee, we would certainly be pleased to hear from you. We hope we will be dealing with it next week to finalize a report on it. Thank you very much for appearing before the committee.

Dr Byer: Thank you very much for the opportunity.

ORGANIZATION

The Chairman: Tomorrow morning the committee will be dealing with the Review Board for Psychiatric Facilities. We have several people who will be here and we hope that we will be able to deal with that tomorrow morning.

Next week, on Tuesday morning, we will be dealing with the draft report on what we have dealt with today. We can hope that we can try to finalize something.

In the afternoon we will be dealing with the draft report, and I just wanted to talk to you briefly about the Ontario Securities Commission. I am wondering if we can finalize that report. I would think that we could and we should aim to do that. We know that the audit is not going to be done until November, but I think we should finalize our recommendations and have them in.

On 23 August we will be adjourning to Penetanguishene and we will be dealing with the Review Board for Psychiatric Facilities there.

Mrs Marland: Could I ask a question on the 23rd for clarification? I know yesterday that we discussed that day. When I got back to the office, I found I do have a public meeting that evening, so I am wondering whether we could agree to a departure time from Orillia or wherever it is.

The Chairman: What time is your meeting in the evening?

Mrs Marland: It is actually at seven. I do not want to govern the committee, I am simply saying that if it was going to be a late departure time from there, then I will have to forfeit my going to Penetanguishene, which I would prefer not to do; I would like to go to Penetanguishene.

The Chairman: I would hope we would be back in Toronto by then.

Mrs Marland: By seven?

The Chairman: I would hope so.

Mrs Marland: Okay.

The Chairman: If there is anything different, we would have to make other arrangements, but we hope to leave Queen's Park at 8:30 in the morning to deal with that.

Then on Thursday 24 August we will try to do a draft report on the psychiatric review board, which would wrap that up.

The following week, on Tuesday 29 August we have the Royal Ontario Museum Board of Trustees and the Stadium Corp of Ontario Ltd briefing in the morning. At two o'clock in the afternoon we will have our ROM hearing.

On 30 August, we will be dealing at 10 o'clock with the Ontario French Language Services Commission. They are having their meeting on Monday 28 August, I believe, and we have requested that they attend before us on Wednesday 30 August at 10 o'clock. At 11 am, the stadium corporation hearings and at 2 pm, the stadium corporation hearings, subject to a tour of the stadium. That is not finalized yet, but that is what we are trying to work out.

On Thursday, we would hope to try to do our draft report on the ROM.

Hon R. F. Nixon: Are the Jays playing that night?

The Chairman: The details have not been finalized on that yet, so we will wait and see how our clerk makes out.

If there are no further questions on that, the committee will adjourn until 10 am tomorrow.

Mrs Marland: Will it be possible tomorrow to have a copy of that?

The Chairman: Yes.

The committee adjourned at 1521.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:
REVIEW BOARD FOR PSYCHIATRIC FACILITIES

THURSDAY 17 AUGUST 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Callahan, Robert V. (Brampton South L) for Miss Roberts

LeBourdais, Linda (Etobicoke West L) for Mr J. B. Nixon

Pelissero, Harry E. (Lincoln L) for Mr Ballinger

Tatham, Charlie (Oxford L) for Mr Miller

Also taking part:

Reville, David (Riverdale NDP)

Clerk: Brown, Harold

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

McNaught, Andrew, Research Officer, Legislative Research Service

Witnesses:

From the Queen Street Mental Health Centre:

Macfarlane, Dianne, Administrator

From the Ministry of Health:

Blackburn, J., Assistant Director, Psychiatric Hospitals Branch

From the Hamilton Psychiatric Hospital:

Dawson, Dr David, Chief Psychiatrist

From the Psychiatric Review Boards:

Smith, David C., Chairman, Guelph Psychiatric Review Board

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday 17 August 1989

The committee met at 1008 in room 228.

AGENCY REVIEW: REVIEW BOARD FOR PSYCHIATRIC FACILITIES

The Chairman: I would like to call the committee to order. We can proceed now. The standing committee on government agencies is dealing today with the review of the Review Board for Psychiatric Facilities. My understanding is David Smith, chairman, is here. Perhaps he has an opening statement, and he may like to introduce the people who are with him at the table.

Mr Smith: Thank you for the invitation here today. First of all, if I may, I would like to introduce the members who are here with me before you. Sitting on my immediate right is Janice Blackburn. She is the assistant director of the psychiatric hospitals branch of the Ministry of Health. Sitting on her right is Ron LeNeveu, the assistant deputy minister, corporate administration, Ministry of Health. Sitting on my far right is Dianne Macfarlane who is the mental health and addiction services program co-ordinator. She is also the administrator of the Queen Street Mental Health Centre.

My name is David Smith. I am the present chairman of the chairmen. I am a lawyer practising in Guelph and I am chairman of the review board in the Guelph-Waterloo area. I should tell you that there are 12 chairmen in the province and each year one of us takes a turn as chairman. I happen to have been handed the mantle for this year so that is why I am here representing the chairmen.

In terms of an opening statement, we had prepared a summary of some of the major features of the psychiatric review board. I believe Mr Brown has circulated that to the members of the committee. With that, we are quite prepared to proceed. There would be one other person that I might call upon for assistance this morning in responding to some questions and that is Dr David Dawson, who is the chief psychiatrist at the Hamilton General Hospital. He is sitting at the back behind me.

1010

The Chairman: Perhaps you could explain first and just give us a little background on the number of boards in the province, the different areas they are in, how often they meet and just a little bit of the background, so it will be on the record.

Mr Smith: As I indicated before, there are 12 chairmen in the province. They are located in Brockville, Guelph, Hamilton, Kingston, London, North Bay, Ottawa, Penetanguishene, Sudbury, Thunder Bay, Toronto east and Toronto west.

Each of those chairmen is of the same stature: when an application is made for a hearing before the review board, the chairman in the particular area will then proceed to set up a hearing. Under the act, of course, this has to be done within seven days. The hearing is held at the psychiatric facility

in the area where the patient is located.

Under the Mental Health Act, the review boards can consist of three or five members. Generally speaking, most of the boards are made up of three members: the chairman, who is a lawyer; a psychiatrist member of the board and a lay person. In total, I believe there are 131 members of the board. That includes psychiatrists, lawyers and lay persons.

The Chairman: Does the committee have any questions they would like to ask at this time?

Mr Callahan: I am not sure if any of these people sitting before us are psychiatrists.

Mr Smith: Dr Dawson, sitting behind me, is quite prepared to respond.

Mr Callahan: I would like to inquire about the present situation of the board and treatment for schizophrenics, whether the present Mental Health Act is of assistance or is a deterrent to being able to treat these people.

Dr Dawson: That circles really around the criteria of dangerousness in the Mental Health Act. Many people with schizophrenia who are very ill, who are not dangerous but very ill, whose judgement is poor and insight is bad and who are behaving in ways that are very detrimental to themselves, but not to the extent of imminent physical harm to themselves or someone else—

Mr Callahan: What you are saying is they do not meet the criteria that would require them to take treatment. I guess they only fit the criteria when they are about to jump off the bridge or assault someone.

Dr Dawson: —or not eating, not taking care of themselves, and nobody else is taking care of them.

That is a constant dilemma for the psychiatrists and the families. That is an area of the Mental Health Act and the review board system and psychiatric treatment that poses a major conflict and a great deal of stress and distress among those people, that there are a fair number of people who are obviously ill but we cannot hold and treat.

One can argue whether we should hold and treat them or not. That is a different question, but the fact is they remain ill, their families are aware of their illness, their families are greatly distressed by the ongoing illness, but we cannot do anything about it in many circumstances until it becomes life-threatening, essentially.

Mr Callahan: Essentially, the questions I am going to ask you is for the record. I think I know the answers already.

Schizophrenics, if they take their medicine, are in some degree of control, some of them very good control, others perhaps marginal but somewhat under control. Is that right?

Dr Dawson: The clinical answer is very complex. A high proportion benefit tremendously from the medication and are brought under very good control. There are some who the medication does not help, and it is a relatively futile clinical effort, but there is a high proportion to whom the medication is of great benefit.

Mr Callahan: I want to keep my questions and your answers short so that I do not take up all the time of my colleagues. I gather that part of the disorder is the paranoia that goes with it, thinking that when taking their medicine, because it may be irritating in some way, they are being poisoned, so they do not take it. Is that right?

Dr Dawson: That is right. There are a number of reasons why many people with schizophrenia will not voluntarily take medication when they are ill. Of course, many of them are young people who do not accept the notion of having an illness, partly because they are young and vigorous and this is a devastating illness, but also because the illness itself affects their judgement, creates paranoid thinking, etc.

Mr Callahan: If they do not take it, they will eventually slide out of normalcy into very bizarre activities.

Dr Dawson: Yes.

Mr Callahan: Even bordering on suicidal tendencies.

Dr Dawson: There is a very high rate of suicide among people with schizophrenia.

Mr Callahan: I would like to ask the board, of the number of cases that you hear by way of appeal, do you have any statistics—and maybe you have already given it to us, I do not know—on what proportion of those deal with patients who are schizophrenic?

Ms Blackburn: The data that we have is not based on diagnosis. It is not differentiated by diagnosis.

One point I would like to clarify: There seems to be a commonly held misapprehension and misassumption that being admitted to a psychiatric hospital, whether voluntarily or involuntarily, dictates that treatment will be given. There is a right to refuse treatment. Many schizophrenic people are competent to make that decision. The committal criteria mandating involuntary admission to hospital and the receiving of treatment are really two completely distinct ideas, and they are often confused.

Mr Callahan: But treatment is withheld until the board has rendered its decision and you people must hear—

Ms Blackburn: Not the decision on committal; the decision on whether someone is competent should he choose to challenge that finding of a physician.

Mr Callahan: All right. You say that many of the schizophrenics are competent. Can you be clearer than that? Are these people who are totally with it, or are they people who have slid out of their degree of competence as a result of not taking their medication?

Ms Blackburn: I am not a clinician and I will defer to Dr Dawson on the point, but the legal issue is that there is a definition of competency to make treatment decisions under the Mental Health Act. The mere fact that one is diagnosed as having a mental illness, even a major mental illness like schizophrenia, is not determinative of the issue of treatment competency. Many people do not like to take neuroleptic medication, which is one of the more standard treatments for schizophrenia, because they do not like the side effects. Even the clinicians agree that the side effects are quite dramatic.

Mr Callahan: Yes, but the side effects if they do not take it are even more dramatic. They jump off bridges and kill themselves.

Ms Blackburn: Again, I would defer to the clinicians, but I think that is quite a broad generalization. It would not be applicable to the entire schizophrenic population.

Mr Callahan: Just one final question, if I could. I do not know whether you are familiar with the Queen Street Mental Health Centre. I think there are something like 365 patients in there. I understand that about 80 per cent of them are schizophrenic.

Mr Smith: I would suggest that Ms Macfarlane could probably respond to that, as the administrator of the hospital.

Ms Macfarlane: There are 600 beds at Queen Street Mental Health Centre. Certainly the single largest diagnostic group in those beds would be clients suffering from schizophrenia.

Mr Callahan: So we have not really done much of a job for schizophrenics or their parents by the amendments we have made to the Mental Health Act, I would think.

Ms Macfarlane: Is that rhetorical?

Mr Callahan: Maybe it is rhetorical, but I would like you to comment on it. You may have a different view.

Ms Macfarlane: Schizophrenics have always constituted the largest single diagnostic category in psychiatric hospitals, long before the most recent revisions to the Mental Health Act.

Ms Blackburn: Schizophrenia is also a disease which is not curable in the classic medical sense, so I think to say that the hospitals and the psychiatrists are not doing a good job because we have psychiatric inpatients is really stating quite a disservice.

Mr Callahan: Diabetes is not curable either, but it is controllable by medication. If we had laws that allowed diabetics to refuse their medicine because of the side effects or whatever other meaningful reason, we would have diabetics who would be out of control too.

1020

Ms Blackburn: We do have those laws, sir.

Mr Callahan: We do what?

Ms Blackburn: We do have such laws. Any diabetic who is competent may refuse or accede to take insulin.

Mr Callahan: What act is that under?

Ms Blackburn: It is not statutory, sir. There is a common law right of any patient who is competent to either accept or refuse treatment. If someone were to give a competent diabetic insulin against his will, he could be both criminally pursued and civilly pursued. They would also be pursuable pursuant to the Health Disciplines Act.

Mr Callahan: They would be pursued for assault. I do not want to debate that. The point I am trying to get on the record and to get clear is that the largest single problem for schizophrenics, and not just them but their families who are just left right out in the cold not being able to do anything for a loved one is because our laws make it so difficult to see that they get their treatment. Those are all the questions I have.

Mr Reville: I will tell you frankly that I am here out of paranoia. I was concerned that Mr Callahan was going to ask precisely the questions that he has asked. I want to ask you some questions that are similar which may recast the situation for members of the committee. Perhaps the doctor would like to respond, or whoever thinks it is appropriate.

The first question that we as a society decide on the presentation of a person for admission to a psychiatric facility is the question of whether this person is appropriate for committal. That is a possible question, is that correct? Then you apply the criteria of dangerousness or immediate apprehension if serious bodily harm is possible, is that correct?

Dr Dawson: For an involuntary application.

Mr Reville: Let's suppose the police bring someone to the Queen Street Mental Health Centre, which is a fairly common occurrence. The admitting physician will make an assessment and make a decision based on whether this person should be committed.

Dr Dawson: He will make that assessment and that decision. But if the patient needs clinically to be admitted, he will try to have the patient admitted voluntarily as the first choice.

Mr Reville: Right. But if the person refuses to be admitted voluntarily?

Dr Dawson: Then he will make the assessment.

Mr Reville: Right. Of the things that the review board does, as part of the process, people saying, "I shouldn't have been committed. I would like a review board on this matter"—I understand about 700 cases like that come to review boards and most of the people are—what happens? What is the outcome of that? Most of the decisions are upheld, are they not?

Dr Dawson: Ninety-five per cent in our hospital.

Mr Reville: The second decision that it is possible for an attending physician to make relates to the person's competency. It is a difficult thing to determine, I suspect, but basically you are trying to figure out whether the person understands what is going on and what the consequences of making particular decisions about the treatment might be.

Dr Dawson: There is some specific wording in terms of appreciation of the illness, appreciation of the consequences of accepting or refusing—

Mr Reville: Two kinds of competence, treatment competence and financial competence.

Dr Dawson: And a couple of other kinds, too.

Mr Reville: And some other kinds. Okay. Yes, whether records should

be disclosed and that sort of thing. That is the second largest number of pieces of business at review boards, people appealing decisions of competence. Most of them are also upheld, right?

The third thing is that if you are found to be competent, you then are entitled to refuse treatment, notwithstanding that in some cases a physician can still make a treatment application.

The Chairman: I wonder if you could indicate yes or no. It does not get on the record when you shake your head. The witness nodded yes.

Dr Dawson: If I am being addressed directly, yes.

Mr Callahan: I think I may have caused him to make his answers short.

Mr Reville: There is hardly anything shorter than a nod of the head, right? The raising of an eyebrow. It is true of course that if you are a diabetic you can refuse insulin.

Dr Dawson: Right, yes.

Mr Reville: If you have cancer, you can refuse chemotherapy.

Dr Dawson: Yes.

Mr Reville: People do that.

Dr Dawson: Yes.

Mr Reville: Schizophrenia is a complex disease. Is that correct?

Dr Dawson: Very complex.

Mr Reville: Do you want to advise the committee on the diagnostic certainties with respect to schizophrenia? Is it a hard thing to spot?

Dr Dawson: In most cases, it is not hard to diagnose at all and can be diagnosed very clearly, quickly, early and with a great deal of certainty. There are a small number of clinical situations that are very confusing and remain confusing for several years until it becomes clear several years later what the illness process is.

Mr Reville: If we were to be introduced to 100 people with the label "schizophrenic" on them, would we perceive them as quite different from each other?

Dr Dawson: Yes, you would; I think you would.

Mr Reville: In terms of treatment, there is a bunch of different kinds of treatments.

Dr Dawson: There is one category of medication that is very—

Mr Reville: But medication is one mode of treatment.

Dr Dawson: All of their activities with schizophrenia are supportive and rehabilitative, as opposed to treating. Nothing but the medication actually treats the illness, in the strict sense.

Mr Reville: Over the years the medication has changed and developed both in terms of titration and type of medication, and will probably continue to develop.

Dr Dawson: Yes. Hopefully.

Mr Reville: Suicide is a problem for some schizophrenics.

Dr Dawson: I do not have the figure, but it is something like four or five times the normal population.

Mr Reville: Do you do work on suicide?

Dr Dawson: Yes.

Mr Reville: Are you familiar with the work of Isaac Sakinofsky, who also does some work in that field?

Dr Dawson: Yes.

Mr Reville: People kill themselves for a lot of reasons. Is that correct?

Dr Dawson: Yes.

Mr Reville: People jump off the Bloor Street viaduct with terrible regularity. Is that also correct?

Dr Dawson: I know what they do in Hamilton; I do not know what they do in Toronto.

Mr Reville: That is a bridge near my house. Is there an absolute sure way of preventing people from killing themselves in the absence of 24-hour surveillance?

Dr Dawson: No, there definitely is not. One difference with schizophrenia is that some of those suicides are in direct response to hallucinations or delusions, which can be controlled by medication. Some of the suicides, on the other hand, are the product of a chronic situation of despair and dead end.

Mr Reville: So when I whine and whine about lack of support services for ex-psychiatric patients, I might be talking about despair, in that case, too. Treatment is not just chemotherapy. It might involve income support, vocational rehabilitation, housing services.

Dr Dawson: In the broad sense of treatment, the broad sense of care and rehabilitation.

Mr Reville: You do not want to hazard any opinion as to how well we are doing as a society in those other connections, not the medical connections precisely.

Dr Dawson: We are doing marvellously well in the long historical sense. I mean, our choices have been, over the years, burnings and extrusions from communities—

Mr Reville: Exile.

Dr Dawson: Some asylums and religious asylums, then of course incarceration in large mental hospitals to something in between.

Mr Reville: When you use the word "extrusion," you are using a psychological term here, which maybe people do not understand. When you work with families of schizophrenics, one of the things you are trying to do is get them to extrude. Can you explain that to the committee? Maybe you do not even agree with that.

Mrs Marland: I do not understand what he means by it.

Dr Dawson: When I used it first, I simply meant that cities and city states and communities historically extruded, exiled—

Mr Reville: They had a kind of gulag for people who were weird.

Dr Dawson: Or left to wander between city states.

1030

Mr Reville: Outside the gate.

Dr Dawson: Right. They probably had very short lifespans. That is what I meant.

One of the dilemmas with schizophrenia in the family is that about 50 per cent of people with schizophrenia stay within their families and essentially live throughout their lives with the family.

Mr Callahan: What was the percentage on that?

Dr Dawson: About 50.

Mr Reville: Half.

Dr Dawson: It becomes a therapeutic and clinical and family dilemma for a 25-year-old or 30-year-old person with schizophrenia: Is his life and their life better if he is moved on to independent living, dependent but independent, boarding home support systems? There are differing clinical opinions on that and each situation is different.

Mr Reville: Having talked to a lot of families, as has Mr Callahan, and probably Mr Runciman—maybe all members have talked to a lot of families; I expect they have—a lot of what you hear seems to relate to the stress that is put on the family, not just by the illness and the behaviours that result from the illness but by the collapse of the expectation that at some point this child would grow up and move away and have a household and family and life of his or her own, and in half the cases that does not happen.

You get the situation where maybe the parents are 65 and they still have Billy at home and he is 40 and he is lying on the couch, smoking cigarettes, usually, and the ashes pile up. There are lots of parental behaviours that seem to be more appropriate for a child than an adult. Is that a problem you run into?

Dr Dawson: Frequently, the two dilemmas with the families are a long period of chaos and turmoil when that state you describe has not been arrived at, when the person with schizophrenia is in the family, out of the family, in

the hospital, out of the hospital, breaking things, chaotic, crazy; very distressing to the family. In some circumstances, that may settle or may have arrived, through a different process, at that quiescent family member who is essentially maybe 30 or 40 but the role in the family is a 10-year-old or 13-year-old.

Mr Reville: You said there is some clinical disagreement about whether it is better for a person suffering from schizophrenia to live outside the home, independently?

Dr Dawson: It is not so much a theoretical clinical disagreement as a dilemma with each case.

Mr Reville: I see. In terms of evaluating the success of the arrangement?

Dr Dawson: That is right. If we work hard to push this particular patient, with his family's co-operation, from the family to a nonfamily environment, will his life actually be better than it would be?

Mr Reville: Would it be your opinion that, at least in theory, you could create a supportive living situation for a person suffering from schizophrenia with appropriate medical and social economic support?

Dr Dawson: For the majority of them, yes.

Mr Reville: That would not necessarily prevent episodic flare-ups of the schizophrenia, though.

Dr Dawson: Not necessarily, although a considered, supportive, controlled environment, plus medication, goes a long way to prevent.

Mr Reville: Should be pretty efficacious. Okay.

Mr Chairman, I am a bit confused. Can you help me with this? This committee is reviewing what the psychiatric review board does, and all this stuff about the Mental Health Act is sort of background, is it?

The Chairman: That is right. We are reviewing the operation of the board.

Mr Reville: And a good thing too. Thank you very much.

The Chairman: I would like to ask a question with regard to the appeals. How many appeals are made to the decisions the boards have made?

Mrs Blackburn: Very few. There has only been a right of appeal in the Mental Health Act since 1984. Between that time and the present there have only been approximately 25—definitely under 30—appeals argued in front of the district court of Ontario. Many more than that are commenced. We receive many notices of appeal. Very few actually do proceed.

Mrs Marland: When the committee decided to review the psychiatric review board, I was not here then. I am just wondering if the decision was made at that time to have three government staff people here. I do not understand the relationship. We do not actually have the chairman of the review board here, do we?

The Chairman: Yes, he is here.

Mrs Marland: Okay. It is the way this is typed up, then. You are Mr Smith?

Mr Smith: Yes, I am.

Mrs Marland: The list here says, "Chairman, Guelph Psychiatric Review Board."

Mr Smith: Yes, that is my specific role, chairman of the Guelph Psychiatric Review Board.

Mrs Marland: But you are also chairman of the Ontario—

Mr Smith: I am chairman of the group in Guelph and chairman in Ontario.

Mrs Marland: I see, thank you. That clears that up. When we have an agency before this committee, it is usually the agency and not the ministry people who are here.

Mr Smith, if you are the chairman of the board, I would like to ask you some questions, if I may. How long have you been involved, first of all? I should ask you that, to be clear.

Mr Smith: This is my fourth year.

Mrs Marland: On the provincial body?

Mr Smith: Yes.

Mrs Marland: In your experience, when you are dealing with involuntary patients, I notice in the act that an assessment has to take place within 72 hours, I think it is.

Mr Smith: That is correct, yes.

Mrs Marland: If you are dealing with involuntary patients and after that patient becomes committed—Do you still use that word?

Mr Smith: Yes, or certified.

Mrs Marland: Do you frequently or infrequently end up with a lot of repeat admissions? I too am probably focusing more on the schizophrenic patient, because of the percentage of psychiatric patients who have that illness. If they receive an assessment in 72 hours and it is decided they do not have to stay in the facility and that they may in fact go home, do you end up with a high number of repeat admissions with some individuals?

Mr Smith: To answer the question as best I can, with the people who are initially brought in on an assessment done in that 72-hour period, the review board would not have any contact with that person until, following that 72-hour period, he has been certified by a psychiatrist in a facility. Following that certification, at which time he is then an involuntary patient, if he is objecting to his certification, he then has a right to appeal or question that certification to the review board. Once the notice is sent to, say, myself, as a chairman of a board, then within seven days of receiving

that notice we set up a board and have a hearing at the psychiatric facility.

Mrs Marland: If the certification is confirmed, is there a time limit on that certification? If it is confirmed, the patient stays in the facility and the assumption is that he would receive some treatment and then ultimately be released. When he is back on the street and he is picked up again for whatever cause, is the patient subjected to that investigation all over again? If a certification has been done in the last 12 months, for example, does the certification stand for a period of time?

1040

Mr Smith: When a certification is made, it stands for a period of time, 14 days on the initial assessment. If the patient is then released or becomes a voluntary patient after that 14 days and leaves a hospital, the process starts all over again if he is brought back to the hospital at a later time.

Mrs Marland: Based on your experience, because you have experience before and since the amendments to the act, do you have any comments on how you feel, from your position as chairman, the act is now serving schizophrenic patients?

Mr Smith: I cannot speak to before, because essentially the major amendments were made in 1986 and that is when I first started doing this particular function.

Mrs Marland: Okay. When you said "four years," I was thinking that you were there.

Mr Smith: I am in my fourth year.

Mrs Marland: Would you like to comment based on your experience in the last three years, with the act as it is today?

Mr Smith: I would defer, I think. Ms Macfarlane might be able to respond better to that, having had a longer period of time involved in this than I.

Mrs Marland: Ms Macfarlane, you are at the Queen Street Mental Health Centre.

Ms Macfarlane: I am, and I am going to be very brave and defer that question to a clinician, because essentially I think it is a clinical question. Administratively, I can speak to issues having to do with the numbers of review board applications and the relative inactivity of patients exercising the larger number of rights they were given in the most recent amendments, but as to whether the legislation is serving individual schizophrenics better than it did before the most recent amendments, it would be pure speculation on my part.

Mrs Marland: Just before we get the clinical perspective, can we deal with that administrative perspective? Are you saying there are very few appeals by individual patients?

Ms Macfarlane: The anticipation at the time the most recent amendments were proclaimed was that large numbers of patients would exercise this new array of rights. That has not been the experience in any of the 10

psychiatric hospitals, to my knowledge, but Janice Blackburn could confirm that.

Relatively speaking, the same number of patients who exercised their previous rights have explored exercising their new rights, but there have not been significant, large numbers exercising what is an amazing array of rights.

Mrs Marland: From your work with those patients who have not picked up that option, do you think it is a matter that they are not aware of the choice and the options?

Ms Macfarlane: I think they are very aware of the choice. Each of the 10 psychiatric hospitals has very proactive patient advocacy and patient rights programs, and I would be very surprised if more than a small handful of patients were not extremely, acutely aware of their rights and how to go about exercising them. I think the 10 hospitals have facilitated the implementation of those two programs to ensure patients are aware of how to go about exercising those rights.

Mrs Marland: Once it is decided that a patient must be admitted, as a patient on the inside of a facility, does he have the right to refuse the treatment once he is in there?

Ms Macfarlane: Yes, if they are competent.

Mrs Marland: Even though they have been judged—

Ms Macfarlane: To be certifiable?

Mrs Marland: Yes. Even though they are certifiable, the only decision that is made by them being certifiable is that they must be—

Ms Macfarlane: Remain in the hospital.

Mrs Marland: Right, but they can refuse the treatment once they are in there.

Ms Macfarlane: If they are competent.

Mrs Marland: Thank you for the answer. I would like the clinical perspective.

Dr Dawson: On the last question, those two issues are separate, and separate legal issues. In fact, there is a fairly obvious logical problem to be deemed to have a mental illness, to be an imminent serious danger, etc, and to say, "I want to leave the hospital and not be treated," and to be competent.

It is very seldom—I think there are one or two situations we have had in the province—where somebody has been deemed to be certifiable, and that has been upheld by the review board, but competent. They logically do not fit together unless you hear the two issues separately by separate review boards. If that occurs, then you can arrive at that dilemma where somebody is deemed involuntary status. That involuntary status could be upheld at the same time as they are competent to refuse treatment.

Mrs Marland: Would you like to comment on my question about whether

the current legislation has improved the situation in the last three years for those patients.

Dr Dawson: The vast majority of psychiatric patients with major mental illness, and especially schizophrenia, do avail themselves of the appropriate treatment and rehabilitation programs, so whatever the legislation is, the vast majority get treatment to the extent that it can be provided either in terms of medical knowledge or resources. The vast majority do. There is a smaller group—it is a very common illness, so by small I do not mean just a handful of people; I mean proportionately small.

Mr Callahan: It is one in every 100, is it not?

Dr Dawson: That is right.

Mrs Marland: What numbers globally in the province are we talking about, of population? I have heard that figure, but I am just wondering, from their perspective.

Dr Dawson: If we are talking about the illness of schizophrenia itself, it is universally, around the world, between half a per cent and one per cent of the population that has that illness.

Mrs Marland: And in Ontario?

Dr Dawson: It is the same. I do not know the population of Ontario, but whatever that is, however that works out, one in 100 have the illness.

Mrs Marland: One in a hundred have the illness diagnosed? I suppose it has to be diagnosed for them to know they have it. Not necessarily one in 100 are receiving treatment however.

Dr Dawson: No, the one in 100 are.

Mrs Marland: Are diagnosed?

Mr Callahan: No, that will have schizophrenia.

Dr Dawson: When a population is studied, it is found that one in 100 have that illness.

Mr Runciman: That means we have at least one in the Legislature.

Mr Callahan: We actually probably have more than that.

Mrs Marland: Is it Mr Smith or Dr Smith?

Mr Smith: Mr Smith.

1050

Mrs Marland: I would like to go back to you, Mr Smith, and I should be quite up front with you. I am asking these questions from a very close personal perspective in my own riding with a daughter of a close friend.

When you look at this illness in the patients you deal with from the review board perspective, I realize you are seeing them as passing people on a stage. They come into your purview, you make a decision on them and they pass

on either to a compulsory residency in a facility or are allowed to make their own choice about their own future.

The reason I was asking about repeat admissions was whether from the perspective of the review board you ever discussed developing a concern about the future of those patients. If you have repeat people coming through your list, do you ever, as a board, sit down in a responsible way and look at what is happening to these people, for whom you are very responsible at that point in their lives when that decision you are making is being made?

When Dr Dawson was talking about the patients, he talked about rehabilitation programs. I am wondering, when you make the decision that the patient must be in a facility, whether as board members you look at what happens to that patient in that facility, or is it purely custodial?

Mr Smith: In considering its decision, the board hears from the psychiatrist of course, who appears before the board, as to what treatment may be proposed. That would be a consideration of the board to take into account in its overall decision. In terms of your question about repeat patients before the board, that has not been a problem within my own experience, having the same people come back before us again.

One of the factors the review board is faced with at this point in time is an appeal decision that was made in 1987, I believe. The effect of that decision was that a review board that has heard, say, the case of patient A, and patient A comes back again for another hearing on a recertification, that same review board cannot hear any of the evidence. An entirely new board must be constituted. That is the law as it exists at this point in time.

Mrs Marland: I see. So you would never have the same panel members on the same patient.

Mr Smith: Exactly.

Mrs Marland: Then there is no way of knowing whether committing that patient is of any benefit to the patient. It may be of benefit to society. If the patient was putting other people in the community at risk because of his behaviour, it could be of benefit to the community. However, if you do not know anything about the history of that patient because you are now a new panel—

Mr Smith: Excuse me. We do have the history as part of the evidence that is presented to the board.

Mrs Marland: Okay. If in that history you notice that this patient had previously been committed on more than one occasion to a psychiatric facility and released, and now he is back again, would that not conjure up for the board members questions as to what the benefit is? I am not talking about the schizophrenic patient who puts the community or any member of the community at risk, but the schizophrenic patient who is committed because he is a risk to himself. If you see that patient come in and out the door more than once or twice, you would have to wonder about what the benefits were of the patient's being committed, which is the question I am trying to get at.

What I have learned in the last three years totally disgusts me, because what I have learned is that if you want active treatment for schizophrenia patients, it is not available in Ontario. It is confirmed by the fact that OHIP will pay for it out of this province. As someone involved with the

decisions that your board has to make on behalf of all of us, I wonder whether as chairman of the Review Board for Psychiatric Facilities you have any global, constructive recommendations to make from your perspective for those patients in Ontario today.

Mr Smith: I could not say to you that yes, speaking for the chairmen as a whole, we have this or that recommendation to make with respect to that. One of the factors you must bear in mind is that when we are dealing with an application of a schizophrenic patient, the criteria the board must look at are set out specifically in the Mental Health Act. There are three areas we must concern ourselves with. One is, is the patient likely to cause serious bodily harm to himself or herself or to another person and is there likely to be serious physical impairment of the patient himself or herself? So we are restricted to those criteria.

Mrs Marland: I said that, Mr Smith. I said, "Knowing that those are the reasons the board reaches its decision." That is why I asked the question. If you do have some of the same names, even if a few of the same names were coming back for readmission on a compulsory basis, would that not raise the question percolating to the top for those review board members that this is not helping this patient?

Mr Callahan: Could I ask something?

Mrs Marland: Yes, go ahead.

Mr Callahan: This power is, I gather, under subsection 32a(1) through subsection 32a(4) of the act. As I read that, what it becomes is—I just want to get this straight in my head—that a doctor, policeman or justice of the peace can satisfy the tests, which are pretty significant, first of all, that someone has "threatened or attempted or is threatening or attempting to cause bodily harm to himself, has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or has shown or is showing a lack of competence to care for himself."

I would have thought that test would have been adequate, but in addition to that the physician has to be of the opinion that the person is apparently "suffering from mental disorder of a nature or quality that likely will result in,

"(a) serious bodily harm to the patient;

"(b) serious bodily harm to another person; or

"(c) imminent and serious physical impairment of the patient."

Then the physician may make an application to have the person just assessed.

I am surprised that there are any assessments made at all and that doctors would even take a chance on making them, unless of course they found somebody killing someone right on the spot and of course that would give them particular grounds.

Then when it gets to you people, with respect, as I understand it under section 32a, you are then charged with only one responsibility, the evidence of previous commitment, previous treatment or previous health of the person are really of no significance to you and should not be under subsection

32a(1), because your review is "to determine whether or not the prerequisites set out in this act for admission as an involuntary patient continue to be met." In other words, even though you have gone through this Juggernaut of getting the person in there, the doctor who has guts enough to make that decision and forget about the consequences gets the person in there, gets an examination of him, decides he is not competent and starts to try to give him treatment, but that has to continue at the time he gets before your committee.

I think that, with the schizophrenic, in a sort of catch-22 situation—I do not know whether this happens but I suppose it could—you would have a person who would be picked up on the street meeting all these criteria, acting out totally because he or she has been off medication completely, getting into the facility and perhaps agreeing to take one dose of the medicine, but the doctor has determined the patient is incompetent and so on. Then when he gets before you people he is perfectly well, or certainly in control, and you have to let him go. Has that ever happened or does that sound like the scenario that could follow, for a schizophrenic anyway?

Mr Smith: That does occur from time to time. Certainly, the patient is brought into the facility, is placed under a certificate and is taking the medication on a voluntary basis, of course, and by the time the board gets to hear the patient, he does not fit the criteria set out in section 31.

1100

Mr Callahan: That is right. So you as a board, regardless of all the things Mrs Marland has said, really could not—I am not saying you could not care less, but it really is irrelevant that this person has been before this board for the 100th time or that his family members are going bananas because they cannot do anything for this person they love.

You are really not concerned with that because your responsibility is under section 32a, and if in fact he or she has popped a pill or whatever the medicine is he or she has to take, the ball game is over, he or she is out the door and can go right back to the streets and do the same thing again until some doctor or policeman or justice of the peace has the guts to say: "To hell with the sections of the act. This person is strange and is going to hurt himself. We're going to send him into the hospital."

It is interesting too that a judge sitting in a criminal case, and this is where I find this act to be totally contradictory, who has a person remanded in custody before him or her or who comes before him or her has a far less onerous test in sending a person for consideration. If I could find the section, I think all he has to do is see that the person is acting out in a strange way. He does not have to go through the loops of the imminent danger to himself or herself and so on. He can send them for examination.

I would suggest that under this act a doctor, police officer or justice of the peace cannot even get an examination by a doctor unless they meets these criteria. That is my reading of it. Very often, just the examination itself, unless the patient is prepared to submit to it, could be frustrated by this act and he or she would be immediately before you guys and would be out. That to me is the most ludicrous situation. If this act—

The Chairman: Good long supplementary.

Mr Callahan: It is a long supplementary. This committee may be limited in terms of what its responsibility is and I am only a sub on it, but

I would certainly hope like hell that when you write your report you tell the government that this act needs revamping to deal with schizophrenics so we can help the families out there. All of us have experienced that, families coming before us with absolutely nothing they can do for the people they love.

The Chairman: That is a question you should be asking these people. Do they feel the act should be amended to help—

Mr Callahan: I will ask first the person who is on the front line, the psychiatrist, what do you think and how do we do it? That is not a fair question. Let's find out if the cat needs belling and then we will determine how to bell the cat.

Dr Dawson: The act, I think, does serve most people well and most patients well and certainly safeguards civil liberties very, very well. There are so many hurdles and hoops that if there are errors, it is on the other side, in the other direction now. One dilemma remaining is the one you describe. It is the very ill person with schizophrenia who is psychotic, who would be incompetent if he or she were before a review board, but would not be before a review board because he or she is not certifiable and is causing families and himself or herself a great deal of distress. We are favouring that person's civil liberties versus that person's need and the family's distress at the moment.

From a clinician's point of view, it is not that clear-cut. I cannot sit here and say that what I would like is to be able to run in and treat these people, because even clinically a person with schizophrenia who is adamantly refusing treatment for whatever reason—delusional, lack of insight, no judgement, etc—probably will not stay on the treatment very long anyhow, with some exceptions. There are some cases in which if we could treat the person for several months as opposed to two weeks, after two or three months that person would start saying essentially: "Thank you. I did need that." That does occur.

But the other scenario occurs just as commonly, which is this person who is adamantly refusing treatment who, when we have the opportunity to treat and make him well, immediately stops treatment anyhow. It is not clear-cut. It is simply, is the opportunity to treat that person going to create any benefit in the long run? Of course, people are talking about ways of doing that on an outpatient basis, which I guess is very complex.

The Chairman: Thank you. If the committee will just give me its attention for a minute, I have a list here of about six people. I want to be fair to everyone and give you equal time. If Mrs Marland would wind up her questioning, we could get on to some other—

Mrs Marland: Does this board come back before us, Mr Chairman, or is this the only time we have with it?

The Chairman: This is the only day this board is going to be here, but there will be the opportunity next Wednesday to ask perhaps another board some questions.

Mrs Marland: Okay. Dr Dawson, based on your work with schizophrenic patients, I know you would support the fact that the treatment is more than medicinal, that the success with those patients is based on them learning to cope with their disease in a total picture and that the rehabilitation of those patients has to be related to a great deal of their understanding their

disease and convincing them it is possible to live a fairly normal life with that disease through intensive program rehabilitation.

Dr Dawson: Yes. That is a major part of the kind of endeavour that goes into treating and rehabilitating these people.

Mrs Marland: Okay. You are in Guelph, did you say?

Dr Dawson: Hamilton.

Mrs Marland: Sorry. You are in Hamilton. Where else have you worked in Ontario?

Dr Dawson: Almost all of northwestern Ontario.

Mrs Marland: Based on your experience as a psychiatrist with a large number of colleagues in that specialty, are you satisfied with the availability of the total program rehabilitation that is needed for schizophrenic patients in Ontario today?

Dr Dawson: No; no. Certainly all across the board from research to treatment to rehabilitative money, they get the short end of the stick. If you take research, I think one of the things quoted is that more money is spent on research into dental caries than into schizophrenia. More money is spent on rehabilitation of schizophrenics, I suppose, than on dental caries, but it is such a vast population and such a common illness and such a devastating illness that it would take tremendous resources to utilize the knowledge we do have now in treatment and rehabilitation to its optimum.

Mrs Marland: By your last statement, you are saying that we do not even utilize the knowledge that exists today because we do not have the facilities and programs in place?

Dr Dawson: No. Here and there, we have some excellent programs in different places: some well organized, some well integrated, some not, some highly staffed and some just scraping by, but doing good work. Certainly we do not have adequate housing for them. We do not have adequate supervised housing for them, the in-between kind of thing, which is not a hospital but not just a boarding home. We do not have things for them to do during the day that are meaningful and useful. Now here and there we do have some good programs. I do not want to say we do not have some good programs, but universally we certainly do not.

The Chairman: Could we move on to another person, Mrs Marland?

Mrs Marland: Yes.

The Chairman: Thank you. I have a question. From the psychiatric review board or the Lieutenant Governor's Board of Review, patients do have access to your board on issues such as treatment, records and competency. What percentage of your cases would come from these people asking you for a review?

Mrs Blackburn: I do not believe that we have statistically broken down our numbers of hearings vis-à-vis whether you are a voluntary or involuntary patient or whether you are a Lieutenant Governor's warrant forensic patient. There are not that many Lieutenant Governor's forensic patients in the province. In our 10 psychiatric hospitals, quite apart from the other 80 or so hospitals that the board serves, there are under 400 people

on warrants of the Lieutenant Governor, and of those, many people actually reside in the community although they are still technically on a warrant. At the risk of making a complete guess, I would simply say it is quite a low figure. It obviously depends on the board. The board which convenes for the Penetanguishene Mental Health Centre would hear a proportionately higher number of Lieutenant Governor's warrant patients because that is where the maximum facility at Oak Ridge is located.

1110

The Chairman: Do the advocates in the facilities represent the patient in many cases at the board?

Mrs Blackburn: Actually, if you would like details of the program, the co-ordinator, Mary Beth Valentine, is here. Generally speaking, it is not part of the advocate program's mandate to actually act as the lawyer for the patient at the hearing. In fact, I believe they are precluded from so doing.

Mr Callahan: They have access to legal aid?

Mrs Blackburn: Yes, the patient has access to legal aid. I have argued about 65 hearings. I only once had a patient who was not represented by a lawyer, but those lawyers are not from the patient advocate program itself.

The Chairman: Thank you. My list is Runciman, Tatham, Velshi, LeBourdais and Breagh.

Mr Runciman: I have heard of advocates testifying before review boards, but perhaps it is up to the board itself if it wants to ask an advocate for his or her position or views.

Mrs Blackburn: I am sorry. I meant to act as the lawyer for the patient.

Mr Runciman: I just wanted to follow up on that question about forensic patients. If someone is committed on a Lieutenant Governor's warrant and is not necessarily certified—I think in most instances perhaps they are not certified; they are there because they have committed a crime or what have you—I am just wondering if there is a complication there. How does the process work if someone is committed on an LGW—and they are obviously there I would assume for some sort of treatment and not simply to be incarcerated—and he has refused treatment? What happens? Do they first have to be certified? What is the process there? How are the mechanics?

Mrs Blackburn: You are quite correct. The person who is on a Lieutenant Governor's warrant and is an inpatient at a facility, he or she is not civilly committed because the detention order is pursuant to the Criminal Code and the warrant. None the less, they still will be assessed for treatment competency or treatment incompetency. If they are competent, they can refuse the treatment. Their conundrum then becomes the fact that they cannot leave. They are at the hospital. Now someone who is an LGW patient who is not treatment competent is subject none the less to the Mental Health Act and the permission of the normal substitute decision-makers will be sought for treatment.

As someone in the committee rightly noted, it is permissible under the Mental Health Act in certain circumstances for the physician to apply to the review board for an order to treat. Lieutenant Governor's warrant patients are

subject to those orders because of the way the act has been drafted. If you need a statutory reference, section 19 of the act permits LGW patients to be treated on treatment orders if they would otherwise meet the test for involuntary committal. So, although we will not have them subject to a form 3 or form 4, if the doctor's clinical view is that this person would otherwise meet the committal criteria, he is not competent and his substitute is refusing, those people can also be the subject of board orders.

Mr Runciman: I just want to talk about a few things I am sure you are familiar with that were drawn to our attention by our researcher, such as the significant increase in numbers of the review boards following the changes to the Equality Rights Statute Law Amendment Act, 1986, the fact that the workload is dropping even though there was an anticipation of a significant increase and costs increasing significantly as well.

Is there any consideration being given to reassessing the decision to more than double the number of people on the unified board and to take a look at what is happening in respect to case load and perhaps reducing those levels to what might be considered more appropriate numbers? I do not know who is qualified to answer that; probably someone from the ministry.

Mrs Blackburn: I could take a stab. The figures I have on the number of applications received versus the number of cases actually adjudicated before the board indicate that the numbers of board hearings themselves are in fact decreasing. They have been decreasing relatively consistently since 1982-83. I think the increased cost, and again this is my best guess, arises out of the district court of Ontario case that Mr Smith referred to, *Dayday v McEwan*. That was the case where it indicated that, for example, the same three or five people should not hear the same patient's committal hearing twice in a row. So board members were added at that time.

Mr Callahan: They probably did not say that. Mr McEwan was insane, was he not?

Mrs Blackburn: Mrs Dayday won the appeal, put it that way.

There have been increased numbers because of the need to have greater diversity on the composition of the board, but the actual number of board hearings—we hope that we are collecting, obviously, accurate data—appears to be dropping.

Mr Runciman: Anyway, I guess the answer to my question is that you are not considering a reduction.

Mrs Blackburn: I am unaware, but I would not like to say that. I do not know what the minister is considering. I am unaware of any such consideration.

Mr Runciman: Mr Smith, when you have these hearings, how long do they last, on average—a day, an afternoon, three or four hours?

Mr Smith: Yes, I would say that. It depends, of course, on each patient, but I would think your average hearing—I am speaking from the ones that I have been exposed to—would probably be an hour and a half or so, during which time you would be hearing evidence and then following that the board will deliberate its decision.

Mr Runciman: So when you sit on any given date, you are only hearing one case, as a rule, and deliberating?

Mr Smith: No, not at all. There may be a couple. Certainly in the busier centres they will have three, four or five applications a day.

Mr Runciman: In your situation of sitting in an afternoon, you are starting at 1:30 and you are done by four, or something like that?

Mr Smith: Some days.

Mr Runciman: Did you say earlier that chairmanship of the boards is restricted to lawyers? Did someone say that?

Mr Smith: I think all the chairmen are lawyers.

Mr Runciman: Perhaps you did not say it. Perhaps one of the other witnesses said that. If you can find out later on, I would appreciate knowing. I would like to hear the rationale behind that.

I am just curious, Mr Smith, about the process of appointment to these boards. You have been serving going into your fourth year, I think you said.

Mr Smith: Yes. It was 1986 I was appointed.

Mr Runciman: How were you appointed? How did that process work? Were you contacted by someone or how did they know of your interest? Just what was the process?

Mr Smith: I was initially contacted by our local member of Parliament.

Mr Runciman: What is his name?

Mr Smith: Mr Ferraro. I had been involved, of course, in my own practice. I had been practising in the city of Guelph for more than 20 years. A major part of my area of practice is criminal law, so I have had a lot to do with the Mental Health Act. Also, I served on various boards with mental health associations.

Mr Runciman: Mr Ferraro contacted you to see if you had an interest and then he, obviously, expressed an interest and he made a recommendation to whomever.

Mr Smith: Yes.

Mr Runciman: In terms of being a lawyer and having your own office in Guelph, what do you think about the per diem paid to chairmen? Do you think it is adequate or more than adequate? How would you describe it?

Mr Smith: You may have different lawyers giving you different answers on that. Personally speaking, I do not think it is adequate. I can do it in the city of Guelph and Kitchener, where I do, because I do not have travelling time to contend with, so from that point of view I can do it and it will still be economical.

Mr Runciman: I gather the appointments of the other members of your own local board were similar in terms of method—they were approached by the local member.

Mr Smith: No, not at all. Some of them may have been. I am not sure;

I cannot speak for all of them in our area. I know I approached one of the psychiatrist members of our board and indicated that we were always looking for psychiatrist members of the board. There seemed to be a problem in getting sufficient psychiatrists. I wrote to the ministry and requested that this particular doctor be considered for appointment, and subsequently he was.

Mr Runciman: With a copy to the local member, so you could keep him informed?

Mr Smith: I cannot remember. It may have been. I am sure it probably would have been, but I cannot remember.

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Mr Callahan: The answer to your chairman question is subsection 30(3). The Lieutenant Governor designates from among the member chairmen an alternative chairman for the panel.

Mr Runciman: So there is no—

Mr Callahan: No requirement for the fee. I thought I would protect my profession, if I could infer that we—

Mr Runciman: If that requirement had been built in in the last few years, I was certainly going to express serious concern about it, because being a member of that profession does not necessarily qualify you for a whole bunch of things.

Moving on to Dr Dawson, this question was asked earlier, but I am concerned about your response: the changes made in 1986 essentially to try to meet the changes in the new Charter of Rights and the restrictions on the ability of psychiatrists to order treatment. Perhaps your answer was as clear as I would like to see it be anyway. Has that change since it went into law created any problems for your profession? Do you see it as a good measure, a bad measure, something that is still up in the air? How would you describe it?

Dr Dawson: I suppose what I did say before was that the vast majority of people with major mental illness still, no matter what the law says or does not say in the processes of the review board, avail themselves of treatment. With the changes in the Mental Health Act, I think, but it would be very hard to actually prove this, there are a small number of people who then essentially get left out of having treatment; small, but highly visible and highly costly in terms of repeated admissions to hospital.

They create a very major philosophical, moral and clinical dilemma for themselves, the clinicians, the institutions and the families. The more the act safeguards civil liberties, then the more that group increases; so they fall into a couple of major categories.

One is the person, who is often a middle-aged person, who is manic, has a manic-depressive illness and is capable of destroying essentially his family, his career and his finances while in a psychotic manic state; but as long as, of course, he does not fulfil the criteria of the act, he cannot be committed to a hospital. That is probably a small number; therefore they go untreated where in the past they would have been treated. Then there are—

Mr Runciman: Can I interrupt, if you do not mind? We have a limited amount of time here. I guess perhaps you feel this is too complex a question

to give a simple answer to, but I guess if you had your way and were calling the shots, would you be advocating changes in respect to this law? I know that certainly, talking to some of your colleagues, they would.

Dr Dawson: I know. The dilemma in answering it simply and quickly is that, of course, clinically we wrestle with it every day.

Right at the moment, there is a woman who is a nonpatient of mine who visits Queen's Park regularly; whom I admit, commit and treat to the point where her hunger strike leads to imminent impairment of the cells, when she is about to collapse; then I can treat her and a week later, I have to let her go.

I might do that anyhow, no matter what the act read, because I do not know for sure, in that particular clinical instance, that holding her for six months and treating her against her will for six months will, in the long term, improve the situation. So there is a clinical problem behind that.

Certainly, there are a number of situations in which a person who is quite clearly incompetent and refusing treatment, but who does not satisfy the criteria of the Mental Health Act, goes without treatment to his or her detriment and to his or her family's detriment and often becomes a nuisance factor in the community. Obviously, if he or she became dangerous, then he or she could be treated. There are a fair number of those cases, and they have probably greatly increased since the changes in the Mental Health Act.

Mr Tatham: It seems from your comments as though we are dealing with the lesser of two evils. I just wondered if there are halfway houses for psychiatric patients? Is there a place where they can have some time when they go out of the hospital or do they go right home? What takes place?

Dr Dawson: There is a range of residences and housing facilities in different communities of different kinds. Hamilton happens to have a great number of second-level lodging homes. It does not have very many supervised boarding homes, that is, where there is active professional or supervisory staff, which probably constitutes more of a halfway house, as you are describing.

Mr Tatham: These are private homes or run by the government?

Dr Dawson: The second-level lodging homes are boarding homes under municipal jurisdiction. There are other residences under different jurisdictions. There are approved family homes under different legislation which can be individual beds within residences, nursing homes or lodging homes, and there are homes with special care beds, which again is the same kind of thing under different legislation. Different jurisdictions have greater or fewer numbers of these beds and housing facilities. Toronto, I gather, was very short. For some time, Hamilton was relatively rich in those kinds of facilities.

Mr Tatham: Do you have many cases coming to you from halfway houses to be reviewed, that have gone out and come back?

Dr Dawson: Many people living in essentially the halfway houses or boarding homes are attending psychiatric services—outpatient services, mental health clinics, rehabilitation programs, etc—and thus are being followed, assessed, reviewed. A fair number are not, and that may be simply by the person's choice. The person chooses not to be attached to a program or to continue with it. In some instances, of course, it is the lack of services;

there just are not sufficient numbers of outpatient services to deal with the large numbers of these people who are living in the community.

Mr Tatham: I have one more question. I have 85,000 people in my county. On your calculation, we should have between 425 and 850 people who are schizophrenics. Is there anything that we as members could do to help in our respective jurisdictions to assist these people or make some kind of comment in our local municipalities?

Dr Dawson: The main thing with schizophrenia is that I think it probably is today one of the most, if not the most, serious and most devastating illness of young people, but it is a hidden illness. We have locked it away in large institutions for many years, hidden it from the sight of the community for many years, and there are a lot of prejudices and strange ideas about the illness that pervade the community at all levels. So we do not address it as a serious health concern as we address some other issues; we do not want to deal with it. Because of the nature of the illness, families are ashamed of it, and only recently are there those kinds of nonprofessional support groups and organizations arising.

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There are not champions for this illness as there are for things like head injuries. They are developing now, but they are working against age-old prejudices and problems and an invisibility in that we have hidden the illness away. In wealthy homes in years gone by, we hid the illness away in attics and basements; the family member was kept in isolation.

Small communities may tolerate one or two people like this in their community. Everybody knows the harmless psychotic person who is in the small community, and small communities have always accepted one or two, but basically we put them away in institutions or now we have isolated them to boarding home regions, which often are not in middle-class residential areas. They are in core city or industrial areas, unless they are isolated again and kept from sight.

The main thing today that is needed for that illness is probably an acceptance of it as a very serious and devastating health problem, the acceptance of it as such and more public awareness promotion, and then support groups, housing, rehabilitation, research, etc.

Mr Velshi: I think my question would go to Ms Macfarlane, your front line, as I see it. According to the Mental Health Act, a physician, a policeman or a justice of the peace has the right to bring somebody forward to your facility. What is the process to bring somebody through that last group, the justice of the peace group? That, I suspect, is what a family would do if they felt the need to have somebody committed or just to be looked at.

Ms Macfarlane: Dr Dawson might be a better person to answer that question.

Dr Dawson: With a very distraught and discouraged family with a schizophrenic member who will not go to the doctor's office or the hospital, who has not done something in the community to bring himself to the attention of the police but remains at home in any one of those descriptions people have made: lying on a couch smoking or periodically breaking things or ranting and raving, etc, what is the family to do?

Family doctors do not make house calls that often, and family doctors are very reluctant to be involved in these kinds of complex situations. Families generally seek advice from the mental health centre or psychiatrist, and the bottom line is application to a justice of the peace. That is a more or less successful activity. It is very uncomfortable for families to do. Some JPs are not comfortable accepting and following through with this. They do not want to deal with this kind of complex emotional family issue; there is a great deal of distortion at this kind of crisis point.

But that is the route the families are finally counselled to take. They take it. Often, of course, they have the experience of taking it, having the justice of the peace fill out the appropriate form, the patient taken to the hospital and within two to three weeks later, released to the family home again. That route is available to families but is a very discouraging one for them.

Mr Velshi: What percentage of applications that go through the justice of the peace are rejected? Have you a very rough idea: 50 per cent, 20 per cent?

Dr Dawson: We do not have the data. It would be strictly a guess. I would imagine a fairly high proportion is committed at the first assessment at hospital. They are in the hospital and therefore remain in hospital a week or two, because it probably takes that long to sort out the information and find out what was really happening at home and does this person really have an illness, etc.

Mr Velshi: Another question now. You may not even have the records of this here. In terms of the population of patients in these facilities, what percentage would be from visible minorities in terms of the population base of a particular area? It is not a trick question. Quite simply, do you find any particular group there larger than it should be in terms of numbers, and would you have any reason for that particular situation?

Dr Dawson: I do not have absolute data. Schizophrenia, for instance, and these major mental illnesses are known to be ubiquitous and in similar proportion in any ethnic and cultural group, but they are expressed somewhat differently in different ethnic and cultural groups. Different communities and groupings deal with these problems differently in terms of whether they take this kind of problem to the local mental health centre or physician, etc.

Those kinds of numbers vary and are not exactly in keeping with the ethnic mix of the community. It varies in those kinds of ways. Some ethnic groups are more comfortable keeping a 34-year-old member of the family home as a dépendent. In other circumstances, that person is more rapidly and quickly pushed out, whereupon he decompensates and is admitted to hospital. Certainly the one group in northern Ontario that you would find overrepresented is, of course, our native population.

Mr Velshi: If some family, because of cultural value system, decides to keep a person at home, is remaining with the family therapy on its own? Is it helpful at all or is it better to get out and get treatment?

Dr Dawson: It depends tremendously on the individual situation and the patient. In many cases, staying at home with the family is probably the most humane and reasonable life that person is going to have, given the alternatives, if the alternatives are only, for instance, a very poor, second-level lodging home. In other circumstances, that person remaining at

home leads to tremendous conflict, distress and repeated breakdowns of the patient.

So in some circumstances it is much better for the person to be out of the family, and in other circumstances it is probably more humane and reasonable to remain a dependent in the family. It is very individual.

Mrs LeBourdais: I will direct my question to Dr Dawson, because Mr Velshi's questions have led him to touch on the area I wanted to explore; specifically, native people. By coincidence, within the last few weeks I had opportunity to tour up in Fort Albany, Moosonee, Moose Factory and Attawapiskat.

Mr Callahan: I hope you did not send any postcards.

Mrs LeBourdais: No, I did not.

How disproportionate is our native population in this? What would be the most northerly facility that can provide treatment? Is the very essence of all the social difficulties that surround that particular group of people what is leading to the problems that lead those individuals to you? In 30 words or less.

Dr Dawson: If we are talking about the illness schizophrenia, the same numbers would exist in the native population as in a white population, etc, so it is the same numbers. That illness, as an illness, exists in the same numbers.

In terms of utilization of jails and mental hospitals, as a whole that has a lot to do with other things such as alcoholism, glue sniffing and social breakdown. All those factors contribute, of course, to institutionalization of the native people in both directions: the criminal and the mental health system. It certainly does not mean that those major inherited mental illnesses are occurring in greater number.

Certainly the community's ability to cope with them within the community is lessened by social breakdown, alcoholism and other kinds of problems. A very organized, effective, small rural community would absorb a couple of people with schizophrenia into it as farm labourers or something, much more readily, of course, than a reserve in disrepair and social breakdown, or, for that matter, many other kinds of communities.

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Mrs LeBourdais: What is the most northerly facility these people would use?

Dr Dawson: In terms of psychiatric hospitals, of course, there is the one at Thunder Bay and the one at North Bay, but they would also be utilizing the facilities of mental health at the hospitals provided by both the provincial and federal governments, and other services provided by both, including here and there. There are native mental health services that are specifically designed for dealing with some of this.

Mrs LeBourdais: It is my understanding that some of our correctional facilities—and I do not know whether this applies to the province or strictly at the federal level—are attempting to deal with the native population by allowing them some of their religious experiences and things that date back to

their roots. Is there any attempt to do this kind of thing, or would you deem it beneficial to provide treatment that would be a little more in keeping with their thinking and going back to their roots, rather than the manner in which you approach treatment for non-natives?

Dr Dawson: Treatment is treatment, of course, and it does not address major social breakdown and all the other kinds of things that have happened with the native population, such as economic situations and housing. What you can do with treatment is very limited in situations where there is poverty, alcoholism and social breakdown. Within those limitations, there is definitely a role for some traditional native healing practices. That is being fostered in places like Kenora, one of the areas that I know of where I know the programs and the use of native mental health workers to bridge the two cultures when necessary and possible. Those kinds of things are being done to the extent that I think human resources and initiative allow. The ideas are there, but the extent to which that is put into practice is another question. That probably is a very helpful approach to that problem.

Mr Breaugh: I would like to pursue with you for a moment the idea of reporting mechanisms from the board's experiences. Are there any now? For example, we seem to have had a little difficulty gathering up statistics and just basic numbers on how many hearings are held, the results and where they go from there. Is there a reporting mechanism that you do to the ministry or to anybody else?

Mr Smith: Each chairman sends in a list each month, I believe it is, of the number of applications and hearings they have had, and it is broken down in terms of kinds of hearings. Are they hearings for certification or treatment hearings? That is sent in to the health board secretary each month.

Mr Breaugh: So that is kind of the extent, that there was kind of a monthly report?

Mr Smith: That is correct.

Mr Breaugh: The makeup of the board itself is such that you could provide us with a good source of information, for example, on resources that are available in various communities over things such as where they live, where they get treatment and what kind of programs are available. You are positioned nicely to make recommendations concerning the availability of legal aid and the fairness of the process; to make recommendations perhaps for areas where the law is working well and with a little bit of assistance could work better, or areas where the law is failing us; and nicely qualified to do something like an annual report with a series of recommendations on these and any other areas of concern that you have. If this committee chose, one of our recommendations to the Legislature could be that the board be asked to do such a thing. Would that be a reasonable expectation?

Mr Smith: I would say so. The chairmen meet about four or five times a year. One of the purposes of our meetings is to discuss problems that we would be having in our respective areas. Certainly there are common problems that we have and matters that could be addressed by way of a report. I see no problem with doing that.

Mr Breaugh: I guess you gathered as you listened to the committee's questions this morning we are not exactly united on the Mental Health Act and whether it is good, bad, failing us immensely or not. I think many of us who have followed it for a while feel reasonably comfortable that this may not be

perfect legislation, but it is a hell of a lot better than what we had before, from a number of points of view.

It is tough. I mean, it is a tough call. If you tried to transpose this into any other area and you said, "Listen, when you go to see your family doctor this week, you must go to the hospital if he says so." Never mind whether you want to or not, whether you think the surgery is necessary or not. If any doctor out there thinks you ought to have this surgery done to you, away you go and it is done. We would probably step back a bit and say that is not right, yet that was very much what the previous act did. If almost any doctor wanted to have you committed, away you went.

Those of us who have worked with groups that have an interest in the field are full of stories of the nature of the treatment, whether the treatment works, the nature of the psychiatric facilities and what they are like. It is something that causes a lot of apprehension in me. Just in talking to psychiatrists, for example, I wish you could say that was like fixing a car, but it is not. It is not quite that kind of science yet.

In doing a report, would the board feel comfortable, for example, dealing with the matter of schizophrenics? Do you think you could provide some advice that would be helpful in that way?

Mr. Smith: I do not know. I suppose they certainly would not be expert opinions, because we are not psychiatrists; we are lawyers. It would be from our perspective from sitting on review boards and only from that perspective. If it were given that weight then, yes, I suppose we could do it.

Mr. Breaugh: The point I am getting at is that we all see this from different ways. From my perspective—and I have a large psychiatric institution in my area, and our coffee shops are full of people out of Whitby Psychiatric Hospital—what they need most of all is a decent place to live. We do not have that. They need resources in the community that just are not there. They need professional staff that are often isolated, overworked and having great difficulty coping with very limited resources. So they do not need a change in the law; they need a change in a great many other things. It is not a legislative change that is required here. My tendency then would be to move in those other areas.

I am wondering whether, from the perspective of the board, you can help us to analyse all of this, because as you have gathered from the questions this morning, this gets pretty emotional in a hurry. The person who probably wants to have someone committed feels very strongly when he calls me at home or comes to see me in the office. You know, his son or his daughter is in big trouble, wrecking the house and doing this, that and the other thing:

I often find it very frustrating, and it seems very clear to me that under the terms of this Mental Health Act there is someone who should be receiving psychiatric care whether he wants it or not—and he will as soon as he breaks a law. That is the distinction. If he does not punch out a cop, if he punches out his brother, it is all right. But as soon as he does in a corner store what he has just done in his backyard, he is going to go to jail, and then his legal rights will be severely limited.

I am wondering if the board itself could find some mechanism that would assist us in going through this in a somewhat more reasoned and analytical way than appears to be the case at the moment.

Mr Smith: Well, certainly I think there could be a lot of merit in your suggestion of a recommendation to have the review board chairman submit a report annually to the ministry, I presume it would be.

Mr Breaugh: Some people have talked a bit about the north. To be fair, there are people who are trying to provide mental health facilities in northern Ontario, but even a casual observer wandering through the north is immediately aware that there is nothing there to assist people, certainly not in the sense that someone who lived in Toronto or Whitby would come to expect. If you live north of Barrie, you have to expect a totally different standard of mental health care facilities, psychiatrists, psychologists, qualified nurses. The range of things that is available to you in southern Ontario simply does not exist in the north. Are there regional differences then that could and perhaps should be addressed if we developed this kind of reporting mechanism?

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Mr Smith: I am sure there would be, yes. We find in our discussions that there are different regions that have different facilities and some offer more than others and whatnot. I am sure that would surface in such a report as you are suggesting.

Mr Breaugh: Finally, is there anything that you would have to say about how we go about providing mental health facilities? We are still stuck very much in the mould of institutional care, even though we do not have the institutions any more. We are struggling a little bit to try to get mental health facilities out into the community but, for the most part, it is still mythology. Mental health patients I am familiar with are still going in to get their weekly dosage of drugs and then off to a rooming house somewhere, and we tend to forget about them, despite all the publicity that has gone on about mental health facilities in the last little while.

We seem to be in a bit of a quandary here. For example, we have been redesigning the Whitby Psychiatric Hospital for about 10 years. We have not actually done anything yet. Every year or so, I get invited to some new briefing about what we are going to do, but we have not really done anything there yet. Are there things like that which would be useful to include in such a reporting mechanism, the state of mental health facilities in Ontario? I mean we do this, for example, for physical plants for courthouses and schools and all that. It has often struck me as odd that we are concerned about the plumbing and the heating and not terribly concerned about professional qualifications, staff levels, things of that nature.

Mr Smith: I would have more concern about that, about the chairmen really commenting on the psychiatric facilities in the area. I think that would be something really outside their area of expertise. They might have some views on it, but in terms of a professional opinion I really would be concerned about that, commenting on, say, whether the Homewood is a good facility or whether the Kitchener-Waterloo psych ward is a good facility.

Mr Breaugh: Okay, so you would probably have some limits on what you would feel comfortable with in terms of a reporting mechanism?

Mr Smith: From that aspect, yes.

The Chairman: I am getting the feeling that you are not really going to be able to be much help to the committee with regard to any

recommendations. I have a feeling you are backing back a bit. Do you feel that you can be of some help to the committee on recommendations?

Mr Smith: I did not come with a pocketful of recommendations for the committee.

The Chairman: With half a pocketful?

Mr Smith: If I may say so, I think the one concern I have has been addressed already. Mr Callahan was questioning about the process of how we have patients come before the boards. Obviously at the time of their admission they were people in need of real care. Then when it comes time for the board to address the issue, they are at a point where they can be properly released from the institution. The point that comes up time and time again that I see, and that I know other chairmen see, is that there are so many of those people who do not have any place to go. They do not have a supportive family. They are not eligible, by virtue of the criteria in the act, to continue staying in the hospital. Where do they go?

The Chairman: I thought Mrs Blackburn had indicated—is there not a ministerial action committee that you can apply to?

Mrs Blackburn: There is a committee called the Interministerial Placement Action Committee of Toronto, which specializes in trying to place people who are very difficult to place. They may have a host of problems. I think Mr Smith is saying that really the boards do not often get a lot of information concerning where a person would go if he or she chose not to stay in hospital if the board were to decide to lift a certificate of committal.

Certainly, many of the lawyers of the patient's bar would argue that legally speaking that information should not be before the board because it is not part of the test of committal. The fact that a person may be homeless should not justify committal to a hospital. It is my guess that the boards are being met with increasing opposition about receiving that type of information on the grounds that it is technically irrelevant.

The Chairman: How do you address what Mr Breaugh raised, that unless you commit a crime—I know I have seen them; I have had them at my office—there really does not seem to be any way to address that area, is there, and if there is, what is it?

Mrs Blackburn: If I might, I would like to make a personal statement as distinct from speaking on behalf of the ministry or the branch for which I work. As someone who has practised as a lawyer relatively extensively in this field, I would have one general comment, and that is that many people misunderstand the law. They seem to believe—I have heard the example used—that someone has to be swinging a machete at your jugular before he can be lawfully committed.

This is not in fact the case. I think there is a general misconception about how stringent the committal criteria really are. If you read the act carefully, it is really an opinion. It is an opinion of future likelihood of certain events happening. The district court case law has made it quite clear that you do not necessarily have to have committed what the judges call an overt act of commission before you can be committed. I think this is, unfortunately, a misconception.

The Chairman: What section of the act would that be under?

Mr Callahan: I would like to take you up on that since it is a personal comment. That is also the statement that is made in the material we were handed by the executive director of the Canadian Mental Health Association, and he is clearly wrong because he says that the current act does provide for physicians to act if a patient—just a second; I am sorry. He says:

"Schizophrenia, should we offer protection of freedom"—I gather that was a letter that was written to the paper—"suggests that the current Mental Health Act prevents physicians from hospitalizing seriously ill schizophrenics except in cases of imminent danger. This is not the case according to legal advice I have received from lawyers and others working in the mental health system. Unfortunately, it is a common perception that suggests a serious lack of knowledge about the intent of the Mental Health Act." That is just what you have said.

"The current act attempts to balance individual freedom with the protection of the individual and society. The recent amendments were passed to ensure compliance with the charter. The current act does provide for physicians to act if a patient is dangerous to himself or others or cannot care for himself."

The section, with all due respect, is very clear that anybody, be it a physician or a justice of the peace or a police officer, has to be satisfied that he meets one of (a), (b) or (c), plus—

The Chairman: What section?

Mr Callahan: You can look at section 10. You can look at section 9.

Mr Breaugh: Mr Callahan, in this room, when that act was passed, our intention was as clear as we could make it. It is on the record. It is in the law, it is in the Hansard that it was an opinion that was being asked for of danger. You did not have to demonstrate danger. You did not have to have a machete to somebody's throat. You sought a medical opinion.

Mr Callahan: Reasonable cause is the test.

Mr Breaugh: Yes.

Mr Callahan: But the interesting thing is, and it goes back to your question, Mr Breaugh, if you commit a crime and you come up before a judge, under section 15 or 16 the judge does not have to even look at those issues, because 15 says,

"Where a judge has reason to believe that a person who appears before him charged with or convicted of an offence suffers from mental disorder, the judge may order the person to attend a psychiatric facility for examination."

Under section 16, "Where a judge has reason to believe that a person in custody who appears before him charged with an offence suffers from mental disorder, the judge may, by order, remand that person for admission as a patient to a psychiatric facility for a period of not more than two months."

If you commit the crime, the judge can send you away for 60 days and you can be given treatment without any—as near as I can tell. They probably have a right of review to your board as well, I would think.

Mrs Blackburn: It is only admission. It is not treatment. They may be admitted. If the person is competent, he could still refuse.

I would hazard a guess that the law was written that way because it would appear, particularly in section 16, that the gentleman who is ill is already in custody. It was probably the judge's opinion at that time that given that there is an appearance of illness, since the person is already in custody, it might be more appropriate for the person to be offered a treatment setting as opposed to a strictly custodial setting.

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Mr Callahan: Just a second. Under the Criminal Code they can certainly do it, because section 19 of the Mental Health Act says, "Any person who, pursuant to the Criminal Code (Canada), is (a) remanded to custody for observation...may be admitted to, detained in, and discharged from a psychiatric facility in accordance with the law."

All I am trying to get at is that in our efforts to help the people who are clearly psychiatric, who are—I do not say this in a disparaging way but to give some analysis to it—not going to change their spots from the time they receive the treatment or are recommended for treatment by the psychiatrist and the time they appear before the board, so it becomes a revolving door syndrome, particularly recognizing that it is a particulate indicium of their disease that they are not going to take their medication, but they will take it to get out.

They get back out, they are on the street and they are wandering around, all these poor souls who are out here or they are threatening former premiers or whatever. That, I think, is the thing we should be addressing.

I just want to ask one final question. The Weisstub report: Is that going to do anything to help? I am asking you, doctor. Are you familiar with the Weisstub report or the review?

Dr Dawson: Just the general intent of it, etc.

Mr Callahan: Is that going to help the schizophrenic? I do not understand it as being anything towards helping the schizophrenic. We will still have the same problem, will we not?

Mr Breaugh: Do not let the fact that it is not written yet bother you.

Mr Callahan: No, but from what you know as being taken before that committee, is it going to solve the problems of the schizophrenic?

Dr Dawson: No. As far as I understand, the mandate is different. It has to do with competency. Of course, the one situation it is addressing that remains a dilemma is that situation of somebody who is probably incompetent, probably very sick but not committable, does not fulfil the criteria.

Mr Callahan: Thank you. That is fine.

Mr Runciman: This information that was just handed to us points out in respect to audits that the board is subject to an audit by the Provincial Auditor and ministry auditors, and the last audit was conducted by the audit branch of the Ministry of Health in 1980. I do not know if anyone would recall that, nine years ago. I assume that was simply a financial audit at the time. No one would be familiar with that.

Ms Macfarlane: Excuse me, sir, I think it was an audit of the administrative support structure in the ministry that provides that support to the boards. It was not an audit, as I understand, of the dollars attached to the operation of the boards.

Mr Runciman: So the boards in essence have never been subjected to an audit that you are aware of, or obviously that our researchers are aware of. I think that is an interesting point to put on the record, especially in light of some of the points that were made earlier and the fact that the number of cases reviewed in the past three fiscal years indicates, in 1985-86, 1,069 cases reviewed with a cost of approximately \$431,000, and in 1987-88, a reduction in the number of cases to 945 and an increase in expenses to \$1,358,000.

I think that when we are deliberating our recommendations and the fact that there has not been an audit done, that is something we should certainly be considering as part of our recommendations.

The other thing I wanted to mention was that I asked about a requirement for lawyers to be chairmen of these committees. Mr Smith, you mentioned this body you serve on now, representing the chairs of the various regional boards.

Mr Smith: Yes.

Mr Runciman: What function do you perform? What is your role at this particular board formed by chairmen?

Mr Smith: We simply, as I say, meet four or five times a year. As to the purpose, there are a couple of main points. One is to share common problems and come up with some common decisions so that procedurally we are operating as one entity as best we can, sharing decisions in terms of different situations that we may be confronted with.

The other aspect is that once a year, we have an educational meeting at which we have all the members of the board come to Toronto and we will have, as we did in June of this year, several psychiatrists from Mount Sinai Hospital and from the Clarke Institute of Psychiatry speak to us on some of the major mental illnesses, so that—

[Failure of sound system]

Mr Runciman: So it does not cause you any concern.

Mr Smith: No, it has not.

Mr Runciman: Mr. Chairman, I would like to have something in writing. I do not expect the ministry representatives to answer this, but the fact that it is not a legislative requirement, it certainly seems to me, makes it passing strange that all of the chairmen on these boards are lawyers. That strikes me as somewhat strange when you look at the fact that about one third of the representation on these boards is by lawyers as well. I see little justification for that. I would like to hear what is the thinking of the ministry people as to why they feel, obviously, that lawyers should be chairing these regional boards.

Mr Smith: I have no idea what the ministry's views on this are, but certainly in talking to people who have been appearing before boards in the past, the structure of the boards and the hearings now are much more

structured than they were. They are certainly informal, but they are not unlike other administrative tribunals, sometimes bordering on a courtlike setting. Many of the patients who come before us are represented by counsel; probably most of them are. There are quite frequently Charter of Rights challenges that are made in the course of the hearings, so it may very well be that.

Mr Runciman: I do not buy that. My view is that the more lawyers you have involved, the more structured indeed this proceeding will become. So I would like to hear the views, and perhaps that is something we may want to have. That has been my experience. Perhaps it is unique but I doubt it. That is it, Mr Chairman.

The Chairman: Thank you. I would like to take the opportunity to thank you very much for appearing before us today. We hope next week to perhaps come up with some recommendations. If there is anything that you feel would benefit the committee and help do that, we would be pleased to hear from you. Dr Dawson, do you have something?

Dr Dawson: You had asked for recommendations before; this is following up on what Mr Runciman was saying. If there is anything I would recommend strongly, whether it is lawyers or nonlawyers, it is that it not drift in the direction of a courtroom, a structured hearing.

Mr Runciman: Yes, I agree. That is what is going to happen, or is happening.

Dr Dawson: When it does drift in that direction, it is very probably a destructive process for the family and the patient and the relationship between the patient and the health care system. When it remains relatively informal—

The Chairman: Like this committee.

Dr Dawson: —we manage to protect the patients' rights.

The Chairman: Thank you very much. This committee is adjourned until 10 o'clock Tuesday morning.

The committee adjourned at 1209.

CAZON
XC19
-G51

STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ENVIRONMENTAL ASSESSMENT ADVISORY COMMITTEE

TUESDAY 22 AUGUST 1989

Morning Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

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Ballinger, William G. (Durham-York L)

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Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Epp, Herbert A. (Waterloo North L) for Mr South

Smith, David W. (Lambton L) for Mr Ballinger

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

Nishi, Victor, Research Officer, Legislative Research Service

Witness:

Individual Presentation:

Smith, Albert

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday 22 August 1989

The committee met at 1012 in committee room 1.

AGENCY REVIEW: ONTARIO ENVIRONMENTAL ASSESSMENT ADVISORY COMMITTEE
(continued)

The Chairman: Our agenda for this week is to do the draft report of the Ontario Environmental Assessment Advisory Committee this morning, and to follow up on the Ontario Securities Commission response to the report this afternoon.

In most cases we go in camera to deal with these, but this morning we have an interesting person here, Albert Smith, who is a resident of Toronto. He has indicated he would like to address the committee for about five minutes. It is up to the committee whether it would agree to that, which I presume it would. Is there consensus that we hear from Mr Smith?

Agreed to.

ALBERT SMITH

The Chairman: Mr Smith, if you would come up to a chair at the end of the table, we will give you a few minutes to address the committee on your concern. Perhaps you would give us a little background on yourself for the record, so that when you read it you will know where you are coming from.

Mr A. Smith: I would like to thank the committee for its indulgence on such short notice. I myself have just read your transcript, so my brief is in rather tentative form.

My name is Albert Smith. I am a resident of Toronto. My background in this particular instance is as a private citizen who requested the bump-up of a major road project in Toronto, the Front Street extension. My remarks today are directed towards many questions that were raised by your committee during its deliberations last week with regard to EAAC. Your questions are coincident with my questions, so I thought it would be helpful to come today and submit some background information. Specifically, I have just become aware of your review and that you have a draft report before you today. I think the information I give you today would be helpful.

On 20 February I wrote to the Minister of the Environment (Hon Mr Bradley) requesting a bump-up of the Front Street extension in Toronto. In support of my request I submitted my public review, which I will leave with you, on the environmental study report produced for this road project. On 12 April 1989, I received the minister's letter notifying me that my request was denied. On 5 June, and at the minister's advice, I made a submission to Metro regarding the official plan amendment, which was, of course, unsuccessful; and the amendment was adopted by Metro in June.

So where are we today? Specifically with regard to the process in this matter of environmental assessment, having read the transcripts of your committee's proceedings, it appears that a number of unanswered questions remain, particularly regarding class environmental assessment in Ontario.

On reading the list of referred projects given to you last week by Dr Byer, as stated on page A-3 of the morning record, items 31 through 39 on the list, I note that my bump-up request was not itemized in the list, although on page A-5 of the afternoon record and in referring to a situation similar to mine, he states that the ministry notified the committee, as it is supposed to do, about such requests. My question is: Was my review referred to EAAC?

With regard to Mr J. B. Nixon's suggestion on page A-18 of the morning record that EAAC and the Environmental Assessment Board be merged: Of course, class environmental assessment is not subject to the normal approval hearing or enforcement process nor, it appears in my case, to consideration by EAAC. How will class environmental assessment be dealt with in that scenario?

I noticed a comment, which I trust will not come into being, regarding the formation of a committee of experts other than this committee before us today. As a related point, my review deals with the scoping process, both in terms of the inadequate range of environmental variables studied and with regard to the intentional fragmentation of this particular proposal so as to minimize responsibility under the act.

Throughout the record, Dr Byer refers to the minor impact of class EAs, which is not the case at all, of course, when one considers the cumulative effects of the unfragmented proposal as a whole. I have only been involved in this business of assessing environmental study reports in one instance, this one, but on observation of a number of ongoing assessments in the city of Toronto, it seems that one of the standard approaches the technicians, the engineers who produce the studies, take is most often to fragment the project into smaller parts and then choose the most benign part as the initial item for approval, then come forward with the other parts.

There are a number of reasons for doing this, but it seems that invariably this is what happens. Of course, in this particular case, where the issue before the public was simply an interchange, the whole proposal was really the widening of the Gardiner Expressway from the interchange out to the Humber bridges and a major bridge reconstruction project, which, if you consider the cumulative effects in terms of air pollution, water pollution, socioeconomic aspects, is a major project, not in terms of cost alone.

1020

Finally, I was very interested to read Dr Byer's comments on public notice and how EAAC advertises itself to the public. Many times, Dr Byer refers to public input vis-à-vis the phase 1 environmental assessment program improvement project, public and defined reviews, maintaining the public list, etc.

I do not consider myself totally unaware of public proclamations in this regard. However, I have not seen or received any public information about EAAC. I would be interested to know how they do distribute information about themselves. If one picks up the phone book, where does one find EAAC? I cannot find it. As I say, I have not seen or received any of this, notwithstanding my status as a known objector—an inappropriate term, perhaps. Having been through the process, I would think EAAC would be making attempts to draw this type of person into its organization or at least to seek information from them.

In fact, if you travel to 1 St Clair West, which is the address printed on the 1988 annual report, you will find yourself at an inappropriate location, since it appears from this that they have now moved to 65 St Clair East. How is the public informed of this new address, much less the existence of the organization itself, or this public list it supposedly keeps regarding ongoing deferrals, exemptions, etc?

In finishing, if you read my attached material, which I will leave with the clerk today—and since it is my original material I would appreciate a copy or the original back—hopefully you will become aware of a number of valid concerns regarding class environmental assessments in Ontario and how, in the words of Dr Byer, "the credibility of the act suffers" due to the apparent disregard shown to objectors in this case—I realize I am speaking only in my own particular situation here, although it appears to be a fairly standard format the ministry uses here—particularly the perception that those of the public who wish to promote the act's objectives will display.

I have also included for your information a particularly well-done brief by the chairman of the Environmental Assessment Board, M. I. Jeffery, regarding the functioning of the environmental assessment process in Ontario. Thank you very much, ladies and gentlemen, for permitting me to speak this morning.

The Chairman: Mr Smith, the Environmental Assessment Board is quite a different thing from the advisory board. Do not forget that this advisory committee is appointed by the minister to advise him on what he thinks is necessary.

Do any members have any questions?

Mrs Marland: Where you are talking about the known existence of EAAC and the role EAAC can play on behalf of people who are not involved in any formal organization, with yourself as an example as an individual citizen, have you not found through your experience that writing directly to the Minister of the Environment, whoever he is, works to give you access to the opportunity you are talking about?

Mr A Smith: That is an interesting question, because primarily through my review process I was dealing with an environmental assessment officer with the minister, who reviewed my project. She provided me with this chart which shows the process one goes through. In here, there is apparently no provision for EAAC whatsoever, but I certainly feel that an objector's probability for success, shall I say, would be improved if some aspect of public input were brought into the process, vis-à-vis EAAC or some other group that could give a different perspective on the objector's comments.

Mrs Marland: So even adding EAAC to that chart would be one vehicle you are talking about?

Mr A. Smith: Perhaps.

The Chairman: Thank you for appearing.

Is it the wish of the committee that we go in camera to deal with the report?

Agreed to.

The committee continued in camera at 1026.

CA20N
XC19
-G51

STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

REVIEW BOARD FOR PSYCHIATRIC FACILITIES

THURSDAY 24 AUGUST 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

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South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Epp, Herbert A. (Waterloo North L) for Miss Roberts

Smith, David W. (Lambton L) for Mr Ballinger

Clerk: Brown, Harold

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

McNaught, Andrew, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday 24 August 1989

The committee met at 1015 in committee room 1.

AGENCY REVIEW: REVIEW BOARD FOR PSYCHIATRIC FACILITIES
(continued)

The Chairman: I call the committee to order. If we can proceed, I think it would be appropriate if we read into the record the people that we met with, the committee members and the administration. When we got there we had the opportunity to go to the boardroom and meet with Mr George Kytayko; hospital administrator; Dr Brian Jones, psychologist, sociologist, unit director social management unit; Carolyn Jones, chairperson of the Penetanguishene Psychiatric Review Board; Kathleen Finney, associate administrator, Oak Ridge division; Elaine Nicholls, clinical liaison officer; Dr Larry Arnold, PhD, psychiatric unit director, forensic assessment unit; Dan Parle, public information officer; Joanna McEwen, layperson, Psychiatric Review Board; and Michelle Condren, assistant to the clinical liaison officer.

We had a briefing with them when we got there and then had a tour of the facility. We broke up into two groups and each doctor led each group through about four different wards. I have been there before and had suggested that the committee see the ward that has been kind of remodelled for the benefit of the residents. I thought it was important to see that floor, although some of the staff of the community advisory board did not appear overly enthused about it; but I think it is important the committee did see that. After that we went back and had a working lunch, during which we asked several questions of the chairperson, Carolyn Jones, and there were several questions asked by the committee.

It would have been nice to have the opportunity to have a little longer with the layperson on the committee. I think these people may be seeing and not able to speak out as perhaps they would like. The other day, when we had Dr Dawson here and Mr Runciman asked some questions, Dr Dawson said that when it does drift in that direction—meaning, with regard to the legal back-and-forth, the representative of the client and the chairperson, who is a lawyer—it is probably a destructive process for the family and the patient and the relationship between the patient and the health care system when it remains relatively informal. When we look at that, I think that is one of the key areas; it is relatively informal for that patient to be able to communicate with the committee.

So, with that, perhaps there are some questions?

Mrs Marland: I would like to add to your comments that I felt that yesterday's visit to the Oak Ridge Mental Health Centre in Penetanguishene was an important visit for this committee. Certainly I, personally, had not been in a maximum security psychiatric facility before. I think it was very revealing yesterday, as we were trying to focus on the work of the Psychiatric Review Board—since that is the agency the committee is responsible for at the moment—that we could not help but begin to look very closely at what that work involves in a facility such as Oak Ridge.

To step into a facility that was built for treatment of patients over 50

years ago, to recognize in fact that physically it really is not a hospital—it is a jail—and know that those patients who come before the Review Board for Psychiatric Facilities only have that alternative of location for their treatment is something that, as legislators I think, we should be looking at in our other responsibilities, representing the elected people of this province, because that building is still in the dark ages. The only reason it works as well as it does is because they have very dedicated, very capable professional staff. The nonprofessional staff are obviously capable and dedicated too.

1020

The fact of the matter is that yesterday was not a warm day. To walk through those nonair-conditioned wings, we very quickly recognized that it is not a comfortable environment for the patients and it certainly is not a comfortable environment for the people who work there.

I think it is important that we all, from time to time, get an opportunity to see a facility like that and recognize that although provincial budgets are always stressed, as is every level of government, sometimes when we are dealing with the treatment of human beings, we do not end up prioritizing budget expenditures the way they need to be. I certainly have seen new, modern facilities for animal welfare that are in better shape than the older wings that we saw yesterday.

I think it was very important that you saw to it that we saw the new wing. It was an expenditure of \$500,000. Half a million dollars was spent to upgrade this one wing. You could not believe that the wing was the same as the old wings when you saw it. I thought what was significant was when we heard that the patients themselves respected the fact that they had carpeting and better lighting. I am sure when they first did it, they did not know whether it would stand up, but the fact that it has stood up and the patients respect that proves that this investment has at least worked, but we certainly heard loud and clear yesterday that this facility is far from ideal for those patients.

As far as the comments from the members of the review board whom we met with are concerned, I agree too that it would be certainly to our benefit to be able to have more time to talk to those people. I think the psychiatrists and lawyers who sit as members of the review board are one perspective on those patients. There may be other professions, but they are called lay people if they are not psychiatrists or lawyers. I think the lay people, as they call everybody else, have a very important responsibility as members of that board.

We heard very clearly that there are problems with the new Mental Health Act, which was amended in 1986 for the obvious reason that it had to come into compliance with the Charter of Rights. There are some amendments to that act, none of which are the purview of this committee, but all of which have to be considered by some committee of this Legislature, because it is obvious that some of the things that were done, hopefully to be in the best interest of psychiatric patients in Ontario, end up not being in their best interest because of the limitations of the act.

The board members talked about their frustration with the endless paper chain of process and appeal; that one day, they get an order for treatment, the next, form number XYZ is filed and everything is stopped again and put back. It seems that a very thorough investigation has to be made, in my opinion, into the new Mental Health Act and necessary revisions made with

input from those members of the psychiatric review board who have to work with that act every day in the interests of everyone. I certainly hope it might be a recommendation of our committee that another legislative committee review the act in order that the work of the psychiatric review board can become more expedient, more realistic and, most important of all, more in the overall interest of those psychiatric patients.

Mr Miller: I too was pleased to have the opportunity yesterday to review and have a look at our facility at Penetanguishene. While Margaret gives an impression that it was for the first time, we sat on a committee three or four years ago along with our colleague David Reville.

I was looking forward to having a look at the facility and to seeing the work that is being done to improve it. There was a major expenditure taking place, and while I did not like the clinking of the doors behind us, and maybe some of that is not necessary, I thought the facility, particularly the part that had been renovated, was a good improvement.

The thing that really came home to me was when we looked at the act, where treatment is required or where treatment can be provided to assist. What was the percentage that he indicated, 20 or 30 per cent? If they took that treatment it would be helpful to them, but if they do not want to take it there is no way that you can force them; you have to go through a procedure which can be very delaying.

I think when the mind is not right that is a sickness and the decision should be made more quickly. If it can help them and provide them and get them back on a proper functioning ability, then I think it is in their best interests and in the community's best interests. I feel very strongly that, while the legislation was changed at that period of time, was improved and seemed to be working somewhat better, we should be looking at that to see if we can improve it more.

I have had several cases in my own time as a member where a husband or wife's mind would go bad and even the family could not force him or her to take medication. I think that is ridiculous. Certainly if my mind goes bad and if I need that treatment, I hope somebody would force me to take it. I firmly believe that you have to respect an individual's rights, but I think there has to be a better way of dealing with it without having to go through such a long legal process.

Mr D. W. Smith: I too enjoyed the opportunity to go to the Oak Ridge centre. I want to commend the chairman for getting that meeting there and for the entire day. We appreciate everything that you have done.

I want to make a comment on what Mrs Marland said. It is the first time I have ever been in an institution such as that, but I have had the opportunity to be in jails. To me there was total difference, yet we are dealing with people who come through the court system in some fashion or other. I think the government is making progress. I am not saying whether it has happened in the last three or four years or whether it might have been in the previous administration that strides were being taken, but you could see progress starting.

As we walked through that new section, as much as I did not totally feel comfortable in some ways, I knew the staff there had to work with these people day after day, 24 hours of the day. There seem to be improvements coming there. Just to have a little more light coming into the area where you live

surely must take away from the—I heard the word yesterday—claustrophobic atmosphere that I felt in the old area, the old wings there. I do not like to hear the word that we are still in the Dark Ages up there because I felt we are a long way from that.

There is certainly always room for improvement. We are dealing with a difficult class. I suppose none of us sitting around this table, hopefully, will ever come to the point where the balance in the mind slips the wrong way and some of our family or some of our friends or some of the people like this who look after these patients have to take care of us. I agree with Mr Miller that sometimes when the mind does go, somebody has to take those steps to help us in our time of need. I certainly enjoyed the day and I am glad I had the opportunity to be a substitute here and be part of this committee.

1030

Mr Breaugh: Unfortunately, I was not able to go yesterday, but I have been the Health critic for the party so I have had an opportunity to visit many of the psychiatric institutions around. I think you should know, if you have never been to another one, that that particular institution is one of our older ones, but it is not beyond the realm of what is normal for a psychiatric institution.

Most of them are very old institutions in transition, built in the earlier part of this century at a time when people were not given very much in the way of treatment. They were put away some place a long way from home, locked up and forgotten about. People are trying to work in those institutions. So I do not care where you go. If you come to Whitby or if you go to Brockville or Kingston or any of the other psychiatric institutions, with the exception of Queen Street which is physically a newer plant, you will step back into the earlier part of this century, and people have to work there.

The only reason I am sticking my nose in this morning is that I would be concerned if this committee decided to kind of step outside of its boundary and recommend changes to the Mental Health Act. If you want to do that, that is fine, but get a mandate to do that.

I would remind you that you have not heard from one person who would be considered to be an advocate for the patients. It would be morally reprehensible for you to contemplate any changes in that act without some expert testimony and a fairly exhaustive piece of expert testimony. I would just remind you that any way you cut it, you are incarcerating people when you put them in a psychiatric institution.

If you did not like what you saw yesterday, come around Ontario and look at the other ones. There are worse places than that. There are places like Whitby, which is scheduled to be rebuilt. They are certainly in transition. They are not sure whether they are going to have a new institution to deal with or what it will be like. They have been in that state for about a decade now. Imagine what it is like to try to practise medical care in that particular field in a building where you are not sure whether they are going to tear the building down next year and whether you should bother painting or renovating or whatever, and that this process goes on for a 10-year period.

I would just caution you that if you want to call for some kind of substantive review of the Mental Health Act, that is fine by me, but do not bumble off on your own, because after all, you are not just sending somebody to the hospital for a weekend here. You are talking about sending someone to

an institution like Oak Ridge for an indeterminate period of time for treatment that they may not understand and that may not work.

Be very careful. We are all certainly entitled to have our opinions. We are all certainly entitled to relate the cases we have heard in our own constituencies, and they are there. But just be mindful that you are in fact incarcerating people and the buildings that you will visit were designed for that specific purpose. People are trying to do very different things in there now, but Oak Ridge is, in some people's minds, not a very good place. I wish it were not close to the norm, but it is pretty close to the norm. Most of our psychiatric institutions are in transition. Somebody is trying to modernize, but it is expensive and I have to say that in two governments now, it never manages to get to the top of anybody's list. Be careful.

Mr South: I think Mr Breaugh's words and thoughts are well put. I think we have to recognize where we are sending these people. But of two of the things that were very forcefully brought to our attention yesterday, one was the incident—I guess it has occurred more than once—with the person who refused to even take a bath or a shower and how offensive it was, not only to the staff but also the rest of the inmates there, and the inability of the staff to deal with that. That is claimed to be treatment when they forcefully take a patient and make him take a shower. So we need a better definition of what "treatment" is.

The other thing concerns that knife-edge of respecting a person's right to make his own decisions, yet at the same time the borderline when they become a physical threat to other people. One doctor told us of a patient who cannot walk down that corridor without taking a biff at somebody, yet the doctors do not have the ability to prescribe medication for him.

When there is physically aggressive behaviour on the part of a patient, again, a better definition of what treatment is and when treatment can be administered in some defined situations like that is a real necessity.

The Chairman: Perhaps we could get back to the Review Board for Psychiatric Facilities. We have discussed a fair bit and Mr Farnan is next on the list.

That board, I think, is functioning very well. I think it causes some problems, but I gather it functions very well. But there is one area where I see there could be some improvement, and that is the availability of that board to be able to report to someone or some agency some recommendations that it could make that would help to improve it.

I think that is probably the one area we could tick in. We could make a recommendation that there should be somewhere that it would report to for it to be able to work better. As far as getting into the act is concerned, I do not think that is our jurisdiction. I think we should deal with the board.

Mr Farnan: I hope you will allow me one diversionary comment, Mr Chairman, considering the manner in which this discussion is taking place this morning. One of the things that struck me was the working conditions of the staff at this institution, and I took the time to talk to some of the staff.

They work 12-hour shifts. There is no scheduled lunch hour for the staff. They often have their main meal with the patients. It strikes me that the priority we give to any particular project is often reflected by the manner in which we remunerate and provide decent and proper working conditions

for the employees involved in that project.

I would think that simply by looking at the remuneration and the working conditions of those employees, it is not in the best interests of the patients to have a staff that does not take proper time to get away from what is a very, very pressurized work situation to relax and recuperate their energies and go back fresh. I do not know what time of the shift it was that we were passing through, but certainly many of those I spoke to looked pretty distressed.

I can say this with some degree of insight because I worked in an intensive care unit in a closed facility for two years in Quebec. I can tell you that the working conditions, compared to what I discovered yesterday, were significantly better in the institution in Quebec in which I worked.

I just wanted to make that comment. I do not know where it fits in, but having listened to the parameters that have been discussed this morning, I did not think I should leave it without making a comment on that.

The second point, and it goes to the heart of what my colleague Mr Breaugh was saying, is that for us to look at this act without any reference to advocates or listening to advocates on behalf of patients would seem to me inexcusable and certainly unexplainable if we had to be responsible for explaining our actions.

This is an observation. I suspect there is a very difficult relationship existing between advocates for patients and the administration and senior staff of the mental health institutions. They are very much in an adversarial and confrontational mode. Why that is—I will leave that hanging, but certainly there seems to be a fairly easy relationship between the members of the board and the administration and the senior staff.

What we would in fact have done would have been listen to two of the players who seem to be fairly comfortable with each other on the one hand, and not listen to any of the people from the other side of the issue on the other. That would be an extraordinary imbalance in input into this committee and certainly not the basis on which to make a sound judgement.

The one question I would ask is, should the board be holding its meetings in the institution? The board is basically an independent group and it is listening to the professionals who work within the institution and the advocate who is without the institution. Should the hearings take place on neutral ground? I know convenience makes it easy to have the setting within the institution. The question I would ask is, should any consideration be given to holding it outside?

The Chairman: I have heard from everyone who was on the trip yesterday. I would hope now that we could get to some specific recommendations so that we have one or two or three recommendations. Let's get on with it.

Mr J. B. Nixon: As you know, I was not on the trip. I was going to urge that we begin consideration of the report we have. I am not clear. Are you suggesting that specific recommendations should be made by the committee as a result of the trip taken?

The Chairman: No, on the whole review.

Mr J. B. Nixon: Let's get on with this.

The Chairman: Would it be the feeling of the committee that we go in camera to deal with the recommendations? Agreed.

The committee continued in camera at 1046.

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- G51

STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:
ONTARIO FRENCH LANGUAGE SERVICES COMMISSION

TUESDAY 29 AUGUST 1989

Morning Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

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Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitution:

Lipsett, Ron (Grey L) for Mr Ballinger

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

Witness:

From the Ontario French Language Services Commission:

Raymond, Gérard, Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday 29 August 1989

The committee met at 1018 in room 151.

AGENCY REVIEW: ONTARIO FRENCH LANGUAGE SERVICES COMMISSION

The Chairman: I call the meeting to order. Today we are reviewing the Ontario French Language Services Commission and then we are going to have our researcher bring us up to date on the Royal Ontario Museum and the Stadium Corp of Ontario Ltd. This afternoon we will be dealing with the board of trustees of the museum.

This morning we have before us Mr Raymond with regard to the French-language services. The committee requested him to appear back before the committee since our review back on 22 March, and I believe he indicated he would have an answer for us with regard to the continuation of the commission. I understand you had a meeting yesterday, so perhaps you could bring us up to date on where we stand with regard to the commission.

Mr Raymond: With pleasure, Mr Chairman. You mentioned that we appeared before the committee on 22 March. I indicated at the time we would start our discussions among the commission members at our very next meeting. As a matter of fact, we did devote quite a bit of time and sought community input into that process and finally arrived at a position that we saw fit to approve as a commission and to present to the new minister responsible for francophone affairs, Mr Beer, as late as yesterday afternoon.

I do not know if you want me to devote some time to sharing with you what the position is that we have arrived at. If that is of assistance to you, we will gladly do so. I must say at the outset that I do so with pleasure because I did not realize that we were expected back before your committee. I got your June letter, to which I responded. I think we are now in a position to give you the information you have been looking for.

In order to establish a frame of reference to define its position, the commission took note of the provisions of the act and reviewed the work accomplished by the various government bodies and agencies during the last three years with regard to Bill 8. As for the legislative requirements, as you know, the act allowed a three-year implementation period and provides for its guarantees to come into force on 19 November 1989. On this date, the commission established by the act will be dissolved and its responsibilities transferred over to the Office of Francophone Affairs.

We also took stock of the activities to be undertaken or completed. Over the past three years, ministries have planned and implemented the French-language services required by the act. Nevertheless, due to legitimate constraints such as the lack of qualified French-speaking staff, some ministries will not be able to complete the putting in place of the full range of French-language services and programs by the November deadline. To satisfy the requirements of the act, however, they will be able to resort to interim measures or to compliance plans. The execution of some activities will therefore extend beyond the implementation period provided for the act and will span at least the next three years.

The commission has identified the main work that will have to be completed once the act comes into effect, namely: maintaining existing services; interim measures as adopted by ministries to comply with the act; compliance plans which are allowed for under the provisions of the act; recruitment of human resources; designation of public service agencies—you will recall we spent quite a bit of time talking about the designation process when we last appeared before you; exemptions, which are very few and far between, and the question of designated areas.

To guide us in our reflection, we asked ourselves whether maintaining an outside organization would be compatible with the present requirements of the act. This led the commission to formulate certain principles upon which any new structure should be based: community participation; representation of the target population or populations; credibility within and outside the government; public access to the organization, and precision and clarity of the objectives and mandates.

The members noted that the current responsibilities of the commission will be transferred to the office whose mandate will consequently broaden. Therefore, the commission remarked that in order for the office to exercise the necessary influence within the government, its new status would have to reflect the expanded role conferred upon it by the act. To this end, the commission is of the view that the status of the office needs to be raised to invest it with the authority and administrative autonomy required to ensure the full respect of the act.

Nevertheless, the members are also fully aware of the paramount importance of community participation in any implementation process. They feel that it leads to a better understanding of the stakeholders' points of view, since it allows the community to participate in the general orientation of policies and programs that concern it directly. Indeed, they feel that community participation is essential to the partnership between the community and the government.

To facilitate this complementary relationship, the members believe that it would be useful, therefore, to retain the services of an organization able to serve the minister responsible for francophone affairs and to complement the activities and the work of the Office of Francophone Affairs. Indeed, the members were unanimous in their belief that such an organization is necessary. The commission feels such an organization would be compatible with the act. The members, therefore, recommend the creation of the Council on French Language Services.

The commission continued in its reflection to identify the fields of activity to which the council would devote itself. As the members see it, the general orientation of the council would be twofold. In continuing the implementation process, it would have the weight and influence necessary to support the minister and to assist the office. In the context of the evolution of the French-language services program in general, it will assist in identifying and pulling together the strategic vision deriving from the principles espoused in the preamble of the act.

The main responsibilities of this advisory council would therefore be to advise the minister and the government regarding services and programs: quality and the availability of French-language services; provision of services and programs in French; implementation of interim measures, compliance and human resources plans; implementation of designation plans for public service agencies, and exemption requests under the act.

The council would also deal with the policy side: planning and implementation of services and programs; designation of public service agencies; addition of designated areas to the schedule of the act, and potential amendments to the act. In its support to the minister, the council would also perform any other function assigned to it by the minister.

Membership of the council would comprise a chairman; representatives of the main fields of government activity directly impacting upon the francophone community, namely, health, social services, education in its broad sense, justice, economy, culture and recreation; and two or three senior civil servants.

In addition, several of these ministries have created French-language advisory committees. It would be desirable that the other ministries endow themselves with such committees as soon as is feasible and, if that were to be the case, it would therefore be desirable that the chairmen of the various committees that operate within the key areas mentioned above sit on the Council on French Language Services.

To simplify the administrative structure of the organization and to avoid duplication of functions, the commission recommends that the council be supported by the existing infrastructure of the Office of Francophone Affairs. To discharge its responsibilities, the council would, as need dictated, retain the services of consultants within a budget allocated for this purpose. The council would report to the minister responsible for francophone affairs. It would submit an annual report to the minister.

As to the duration of the mandate, the commission is recommending that the council assume its functions as soon as the act comes into effect. Since three or more years will be needed to complete the work, the commission recommends that the mandate of the council be reviewed again at the end of its third year.

At this time, and we feel strongly about this, when the act has been in effect for three years and the community has had a chance to use the services, the commission feels that the government and the minister responsible for francophone affairs will be in a better position to determine whether another mechanism would be more appropriate for the situation.

Mr Chairman, that is the position that we have presented to the minister responsible for francophone affairs.

The Chairman: Thank you. In regard to the makeup of the advisory council, where would those people come from? When you say three from the ministries—

Mr Raymond: There are a number of ministries, as it is, that have advisory councils. There is CFOE, the Council on Franco-Ontarian Education, reporting to the Minister of Colleges and Universities, the Minister of Education and now, I guess, the Minister of Skills Development.

The recommendation that we are making is that the three or four councils that already exist have a chairman. Two or three of the new ministries or new fields of activity could endow themselves with a similar body, and then the chairman from these various councils would form this new Council on French Language Services so that at the table you would have representatives of the key sectors that have a direct impact on the quality of life for the Franco-Ontarian community of this province.

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Mr J. B. Nixon: Mr Raymond, I would like to thank you for being so forthcoming. I think every member of the committee will appreciate that you and the ministry have come to, if not the same, a similar recognition that there is a continuing need for advice given to the minister and the ministry by some form of advisory body as we go through the course of implementation of Bill 8. I think it is good news from our point of view and from Ontario's point of view, because we were all concerned about the gap that might exist on 3 or 8 November when your commission was sunsetted to expire by legislation.

My question relates to individual concerns that may arise during the course of implementation of Bill 8. There are all sorts of questions being raised by individual employees of the public service as to what their status will be and where they are going. To a certain extent I expect those concerns will be alleviated by an educational program. Another question I would have to you is, what sort of recourse will they have in the broad scheme of things for answers to the concerns or grievances they may have?

Mr Raymond: Mr Nixon, through you, Mr Chairman, when we last appeared before the committee I was accompanied by the executive director of the Office of Francophone Affairs. Since that time we have had ongoing discussions with a number of central agencies, including the Human Resources Secretariat.

I can tell you that I am quite pleased, as chairman of the commission, to report to you that there is now a train the trainer program to address the very issues in the various ministries. It is a communications strategy that is internal to the government to appease some of what I consider to be mainly unfounded concerns. It has been said and repeated that nobody will be denied a promotion or will be out of a job because of his lack of ability to speak French as a first language, or a second language for that matter.

As a matter of fact, on the process of designation of positions, the rules of the game are such that the position can only be designated once the position has become vacant. So I think that concern has been raised, but I am not aware of a single situation where an employee of the government has been put out of a job because he did not speak French as a first or second language.

Mr J. B. Nixon: I am wondering if you could perhaps go over in a little more detail to a certain extent, for the benefit of a couple of members who were not here and also for my benefit, the nature of the advice that would be given by this advisory council and the nature of independent investigation it would engage in prior to giving advice to the minister and the ministry on the implementation of the bill.

Mr Raymond: I am of the view, and so are the members of the commission, that there needs to be a better and clearer definition of responsibilities between the commission and the Office of Francophone Affairs. Up to this point in time—and I am speaking candidly—I feel that there has been at times duplication of efforts. To me the commission should be the think tank for the minister and for the government and should stop short of getting involved in the daily administration of the act.

In other words, if I may use an example, in the designation of community agencies, which will be a major undertaking in the years to come, the commission should advise the minister and the government on the rules of the game but should not be called upon to pass judgement on an individual request for an individual designation, be it total or partial.

The second part of the mandate as we see it is a strategic vision, if you want to call it that, of where the government should go or would want to go. In the eyes of the members of the commission, it should be in tune with the community or communities they represent, what they think the needs of the future will be and, therefore, the emphasis should be on strategic planning as opposed to the operational daily activities of the ministries.

The second part of your question, to do with the investigation—

Mr J. B. Nixon: By that I do not mean investigation of complaints from the man on the street. What sort of independent investigation will the advisory council conduct in order to give the advice that you are proposing?

Mr Raymond: We are of the view—and I am speaking from personal experience and without a vested interest in this, because I am not going to be associated with this commission come a certain date. As far as the infrastructure is concerned, I think there is a way of avoiding duplication, via the support staff, the office administrator. I think the services could be shared between the two bodies.

As for the conducting of inquiries or studies, as I mentioned in my earlier presentation we are of the view that the commission should have the ability and the budget to retain outside consultants if that becomes necessary. Should they see fit to employ professional staff, I would be of the view that it should be very restricted in number. That would be up to the new body to decide, but I would not see a large group of people. I would rather rely on secondments, short-term assignments, loans and outside consultants, if that becomes necessary.

The Chairman: Mr Raymond, you had indicated earlier on that nobody has lost their position because of not being bilingual. I bring your attention to the case in Orillia—perhaps you are aware—where a contract employee's contract is not going to be renewed because the position has been designated a bilingual position. I guess you are not aware of that situation.

Mr Raymond: I am, but it is not a unique situation, if I may suggest, in the sense that I, as the former chairman of the Civil Service Commission, have seen other situations where contract employees have not been successful in securing a position, a position that had nothing to do with having a second language as a requirement. It is just that the way the Public Service Act is written and the way the collective agreements are written and agreed to, contract employees do not have the same protection as regular permanent employees of the government.

It so happens that in this case there is a linguistic requirement attached to that job, but there are other situations where French as a language is not a requirement and contract employees have not been successful in getting the job.

The Chairman: In other words, the reason she did not get the job was because that job has been designated as a bilingual position.

Mr Raymond: In the eyes of the ministry, I guess it must have considered that the position was not permanently filled and therefore it was in a position to designate for the purposes of Bill 8.

The Chairman: What recourse would that person have, if any? Would they be able to go to the Ombudsman or who would they go to?

Mr Raymond: Any person can go to the Ombudsman, but they would not be able to go to the Civil Service Commission.

Mr Breaugh: To be fair, I think we should get this on the table. The reason you are here this morning is that we sought your advice and it seemed to take quite some time to get that advice. The committee was a little anxious. We wanted your opinion on whether there should be something like an advisory committee or council set up, but it seemed that the answer was not quite forthcoming. If I may say, that is going to cause us some problems in the future if there is that kind of difficulty between a legislative committee that seeks your opinion on the matter, and the way we saw it and the way you saw it. It turns out in the end, it seems to me, that there is not a problem here. You did what we asked you to. It is just that for some reason we had anticipated a slightly faster response. Could you give us a little explanation of why it took so long to get this information together?

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Mr Raymond: Yes, but let me say at the outset that I was under the impression—wrongly so, I guess—that we were not expected back before the committee. I know that you and I discussed this issue and I read the Hansard. I think I indicated in response to your very question, Mr Breaugh, that it would take a number of meetings before we arrived at our discussion.

But we did not want to take this lightly. This was an item on our agenda at a number of meetings, so we did not devote full meetings to this single issue. At our first meeting we reviewed the legislative requirements and the implications of the act, an overview of the implementation difficulties faced by ministries, the shortcomings of the various plans, measures adopted to overcome them. We undertook an inventory of activities to be completed beyond the coming into force of the act.

At our second discussion there was a solid recognition on the part of the members of the importance of community participation. That was also raised by you, I think, at our last meeting. So we then proceeded to reflect on means of attaining community participation, evaluation of a general contribution of the commission to the implementation process. We identified principles the commission felt should guide any new structure, and then we discussed the community's expectations and needs with respect to the issue. That was the second kick at the can, if I may say.

Then at our last discussion, there was unanimous consensus on the necessity of the existence of some organization. We looked at various alternatives. We discussed the pros and the cons. We arrived at the position, and then we had an opportunity to present it to Mr Beer, the new minister responsible for francophone affairs, yesterday afternoon.

I am sorry if in any way we misled you, but we took our assignment quite seriously, and we now are in the position to share our point of view today.

Mr Breaugh: I do not want to belabour the point, but I do think it is worth noting that none of us will have the luxury of going away and thinking about these things and discussing it among our own little group for as long as we want and then at some subsequent time responding to some other group. I think you are beginning to sense now that all of us, as members of the Legislature—there is not a full war cry at work out there yet, but there is certainly a little skirmishing here and there around the edges. People are not going to be really happy with us if the best we have to say to them and

their real problem is, "Well, there's a commission somewhere that sooner or later will answer your problem."

To go back to something you said earlier, you may be right: There may never be a person who does not get a job in the Ontario civil service anywhere because he or she does not speak the French language. But it is also true to say there is going to be a perception developed among a lot of people that they did not get the job because they do not speak French. Somebody will have to deal with the fact that the French language had nothing to do with it, but I know at least one person, me, is going to have to deal with the perception that they did not get that job. I will have to provide to some constituent of mine at some point a reasonable explanation—not in your eyes, not in my eyes, but in his eyes—that he had a fair shot at a job and the fact that he did not speak French had nothing to do with whether he did or did not get that job. That is the problem we all have to work at, to create an acceptance of this.

Let me try to go through a couple of things you have mentioned in your deliberations on the matter. I want to hear a bit more about the compliance stuff. I am apprehensive about that, mostly because we have a number of agencies which deal with everybody's rights in labour matters, for example, everybody's human rights. I do not want another agency to establish compliance with a law. I would be quite happy, in fact I am anxious that we have an advocacy group for French-language services in Ontario that is representative of the French population here and all of the communities that are involved in that, and that is an avenue for them to express their opinion to a government.

But I certainly do not want a French-language advisory council, committee, whatever, that one day advises the minister on what to do and the next day decides whether he or she has done that. That seems to me to be unfair. If we are going to have somebody who does the compliance routine, there are a lot of factors involved in that: the provision of services is one of them, but there are also a lot of other people's rights that are involved.

I have a difficult time. We have a number of advisory committees that do that. The problem I have is that you are one or the other. Either you advise the minister on how to proceed or you adjudicate on how to comply with an act. But when you try to do both, it seems to me you have difficulty. I would like to hear a little more about what you have in mind in terms of compliance.

Mr Raymond: Compliance, in this context, is not within the legal definition that you understood it to be. Let me give you a couple of examples by way of illustration. Within a designated area, road signs will be bilingual, either unilingual English and unilingual French or bilingual on the same sign. That is quite an extensive and a major undertaking in some areas. There is also as signs are being replaced. You do not want to throw good money after bad money.

Mr Runciman: Is this a new policy we are hearing?

Mr Breaugh: It would be first in the history of Ontario. The government uses common sense.

Mr Raymond: So a compliance plan—I am using this as an example to better define the term—is meant to allow the ministry beyond 18 November to complete the work that has been started before 18 November over a period of three years beyond 18 November. So they will have until November 1992 to complete that work. The compliance is an undertaking on the part of the

ministry to complete some work that has been initiated prior to 18 November. It is not compliance in the sense that it impacts on private citizens of the province. It is an undertaking, a commitment on the part of the ministry.

Courses by correspondence in the Ministry of Education would be another example. It would just be impossible to have all the courses available in a matter of a few months. It is a major undertaking. Therefore, it is being phased in over a period of time and it is going to go beyond 18 November. Therefore, the Ministry of Education has filed with the office and with the commission what we call a compliance plan, this commitment to complete the work. It is in that sense that we use compliance.

Mr Breaugh: I cannot speak for everybody here, but I have no interest in setting up a board or commission to adjudicate whether the sign can be in English or in French outside somebody's shop. I realize that, for example, in Quebec there is whole different milieu in which those discussions take place, but I do not think people I represent would have much time for the province of Ontario spending a whole lot of effort adjudicating whether somebody's sign selling videos or whatever has to be in one language or the other. We have a little different context in looking at it.

Mr Raymond: Bill 8 only applies to ministries and government agencies where the majority of the board members are appointed by order in council. It has nothing to do with municipalities or with the private sector.

Mr Breaugh: That is true. You and I can have that discussion, but none of that stops the fact that I know I have people who live in my riding who, when they drive down an Ontario road and see a road sign in the French language are going to be unhappy about that, and I have to provide them with a reasonable explanation as to why that road sign is in French. I know I have some who, it would not matter what I have said or what I did, are still not going to like it in the end and we are just going to agree to disagree. But for the others, there has to be some rationale.

Let me pick up on one other point you mentioned. You did talk about an annual report, and you did talk about a review after a three-year period. One of my concerns, to be blunt, is that I appreciate the fact that we really do need to have some group advising the government strictly from the point of view of French-language services; I think there is a very legitimate role to be played there. But there also, it seems to me, needs to be a number of occasions when a group like this committee can provide a little input as well in whatever way it deems to be appropriate. An annual report would do that. A review by this committee or some other committee would do that.

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But I would prefer that it not be in the middle of some raging controversy. For example, if the Provincial Auditor thinks you have spent money incorrectly, we could certainly have that kind of review, but that is not going to be a basic commonsense review of how we are going about this; that is going to be done in the middle of some accusations. If any of our legislative committees sense that the provision of French-language services has done somebody out of a job, has had a negative impact on one of our communities, somebody will find a way to get in front of a legislative committee.

I am concerned that when we review these matters that it not be done always in the middle of some great controversy. I would like the occasion to

review this when there is not anything controversial going on, when we are just discussing what would be a good commonsense way to do this, what would be a silly expenditure of public moneys and efforts and what would be a sensible way to go about that. Are you satisfied that at the end of three years we should do that? Perhaps we should pick up the annual report. Just how do we bring everybody else, who perhaps have no interest in the provision of French-language services in Ontario, into this discussion, or are we just going to wait until some disaster occurs and then we will do it?

Mr Raymond: The normal rules of government would apply to this new body as they apply to any other body. I take it that you people draw up a list of agencies that you want to review in the course of the next quarter or the next six months. It would be your privilege to review the work of this new council as an agency of the government. The budget for this new body would also form part of the minister's total budgetary allocation and there is the estimates process that is, I think, another opportunity for members to raise questions.

There is in the act this requirement that the responsibility of the commission be transferred over to the office. Short of amending the act, I think you are left with the type of council that we are talking about, which is an advisory council. I think the real policy questions should not be addressed to the advisers but should be part of the regular process for government policy review, but this does not preclude you from inviting the chairman or the members of the council to appear before you as a body.

Mr Breaugh: I just conclude by offering something for your consideration. I know as a member of the Legislature that when something goes wrong, I have a number of ways to bring that to the attention of the Legislature, a legislative committee. I can make some noise about that, but it is all dependent on my establishing very simply that something is wrong, in my opinion. What I am groping for is that I would like to find some way to prevent that from being the sole occasion when we talk about the provision of French-language services. I would like to find some vehicle whereby we can talk about when something goes right or have our discussion about that before it goes wrong or arrive at some sensible compromise before there is some great controversy under way.

I am mindful that this is going to be a fairly sensitive exercise. The moment that someone barges into a committee room here and says, "You have to spend \$500,000 to provide simultaneous translation in every single meeting that goes on here at Queen's Park," we are going to have a major controversy, and the act can be interpreted in that way. So I am groping about to see if there is some way we can deal with this in a little more sensitive way. I am looking for vehicles whereby members of the assembly could do that.

I do not need any more vehicles when something goes wrong; I have lots of those. I would like you and your committee maybe to turn your mind towards some situations whereby members of the assembly can find a way through this without a great controversy. Maybe that is not possible. If it is not, we will all just bite the bullet and do what we have to do, but I think it would be worth while to do a little prevention in all of this before something goes wrong.

The Chairman: Do you have any response, Mr Raymond?

Mr Raymond: I am not so sure that the forum you are looking for will be provided through this council that I am talking about, because the

membership is mainly through public or community representation, but it seems to me—I am only repeating myself—that you could invite the chairman or the members of the committee to appear before you. You could have individual meetings. I am sure that if you wanted to attend a council or commission meeting, you would be welcome to do so.

You are talking as a policy-maker, and what we are talking about is a group of policy advisers. It is the policy-making process that I think you are looking for, which is not necessarily provided by what we recommend.

Mrs Marland: I have a number of questions. I am going to make the questions as brief as I can, Mr Raymond, and if we could do the same with the answers, we will probably get through.

I have looked through both the annual reports of 1986-87 and 1987-88 and I cannot pluck out of there the percentage of Ontario's population that is francophone. I think I know what it is, but I would like you to tell me.

Mr Raymond: I have not got the exact figures. Did we bring them?

Mrs Marland: Just a ballpark figure in a percentage.

Mr Raymond: The 1986 census would be the most recent. The ballpark figure is roughly at 1 million of French extraction. French used in the home is considerable. Then there is a new phenomenon in Ontario, an association by the name of l'Association multiculturelle francophone de l'Ontario, which is a multicultural organization; according to statistics I have seen, there are another 500,000 who either have French as a second or French as a first language in our newcomers to the province.

Mrs Marland: The answer for francophone would be around five per cent.

Mr Raymond: Five per cent and 500,000 are the ballpark figures that you can use.

Mrs Marland: What is the cost of printing all the government reports and documents in French?

Mr Raymond: I wish I could give you that answer. If I had known we were going to go beyond the proposal on the new body, I would have invited a representative of the Office of Francophone Affairs to come with me. The administration of the operational side of the act is really under the office and not under the commission. I do not know if there is a total figure. I think it would be available from individual ministries.

Mrs Marland: I will get that by the other route then.

I notice that the foreword of the 1987-88 report says in the third paragraph: "The commission considers that the French Language Services Act, 1986, goes far beyond the mere translation of correspondence, publications and signage. The preamble of the act recognizes 'the contribution of the cultural heritage of the French-speaking population' and the need 'to preserve it for future generations.' In short, the act enables the French-speaking population to make a greater contribution to the economic, political, social and cultural life in Ontario and favours the growth of the province as a whole."

Based on your experience as the chief commissioner, would you say that

that statement would apply to all citizens in Ontario, that all citizens of Ontario are committed to the province in a greater—

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Mr Raymond: I have no doubt about the level of commitment of all citizens of Ontario. What we were trying to say, and this is mainly true at a younger age, is that the more secure you feel in your own language, which is one of the two official languages of Ontario, the greater contribution you are able to make.

Mrs Marland: Right. And we have established that the own language of francophones in Ontario is about five per cent of the population.

Mr J. B. Nixon: No, we have not.

Mrs Marland: Excuse me. I am asking Mr Raymond the questions. He is quite capable of answering.

Mr J. B. Nixon: It is a leading question that is based on information you have already received which is incorrect.

Mr Raymond: But the act only applies in designated areas, and to this point in time designated areas are guided by two principles: 10 per cent of the population or 5,000 people within the boundaries of a given area.

Mrs Marland: I want to go now to an advertisement in the Toronto Star, Tuesday 1 August 1989. This is an advertisement by the Ontario public service. This is one of many that are being continually mailed to my office, both at Queen's Park and in my riding, which is Mississauga South.

At the bottom of this advertisement, under "Ontario Public Service," it says "Dedicated to Employment Equity." The first position advertised is for a project officer, the salary and it is with the Ministry of Education. Under qualifications it says: "good command of English; advanced oral and written French-language skills."

Miss Roberts: But not necessarily a good command.

Mrs Marland: Further down, the next advertisement is for a licensing and research officer.

Mr J. B. Nixon: I think we are getting repetitious.

Mrs Marland: Mr Chairman, I do not know why the Liberal members are so sensitive that they need to interject.

Mr J. B. Nixon: I am concerned that you are wasting our time, because we have been over this already.

Mrs Marland: I did not suggest, when you were speaking, Mr Nixon, that you were wasting our time.

Mr J. B. Nixon: I am suggesting that you are.

Mrs Marland: I am sorry that you are so sensitive about the subject.

Mr J. B. Nixon: I am sensitive that you are wasting government time.

Mrs Marland: You had 10 minutes. I wish to have the same courtesy, thank you.

Licensing and research officer, with the Ministry of Financial Institutions. Qualifications: "good command of English; superior oral and written French-language skills."

The third one is a public relations officer with the Ministry of the Solicitor General. "Qualifications: Superior communication and oral/written French-language skills; good command of English."

It is very interesting how these advertisements are written. I know they are not written by the commission, they are written by the ministry. But the point is that when people in Ontario who are seeking jobs within the Ontario public service read these ads and recognize that what is being asked for is not equal ability in the two official languages but rather "superior" ability in French and "good" command of English, I am wondering whether your commission ever reviews these advertisements, Mr Raymond, and what opinion you have about this kind of advertising for jobs in the public sector of the Ontario government. Would you like this copy?

Mr Raymond: No, we see them all. There is another one in the Star this morning. I thought this question could be raised. Out of eight positions, there is one requiring French as a second language.

On the level of French required, there is a manual that was prepared by the Office of Francophone Affairs and the Human Resources Secretariat. There are different levels, which I will not venture to try to explain to you, but it all depends on the level of contact with the members of the public. If I may use an example, if you are a clerk selling fishing licences and you can transact easily, that is fine; but if you are a social worker trying to get to the bottom of an emotional, personal problem, the level of comprehension, the quality of the communication takes on a different dimension. So ministries are free to designate the level of competence that is required for given jobs, and that is clearly their responsibility.

As to the number of positions advertised, you will recall, Mr Chairman, that I wrote to you on 29 May, because a member of this committee asked a question for 1988-89 as to the number of total positions that had been advertised. Government-wide, regardless of language, in 1988-89, 4,431 positions were advertised. Of these, 621 positions were designated.

I can understand that the closer we get to 18 November, staff personnel of ministries will try to fill the various designated positions so that the services will be offered, but it is only a total of about 6,000 positions that will eventually have been designated across the government. I can appreciate that there are examples of positions being advertised, but that to me is a normal process under the requirements of the act.

Mrs Marland: But I am not dealing with the issue of the number of jobs that are advertised requiring French versus those that do not make that a qualification. What I am dealing with is the fact that more and more of these advertisements say right on them that the Ontario public service is dedicated to employment equity. What I am asking is whether you think it is employment equity when they are looking for someone who is better in one or the other. Even if it said superior English and good French, but in these ads, every ad advances the superior requirement in French but only good in English.

Mr Raymond: I am of the view that employment equity is not

incompatible with the requirements of a job. If you are a biologist working in the Ministry of Natural Resources, the requirement that you have a degree in biology is not not incompatible with the requirements of the job and with employment equity. To ask a person occupying a French-language designated position to be able to speak the language is not to me incompatible with employment equity.

Mrs Marland: If I apply for this job and I had a good command of English and a good command of French, I do not meet the qualifications this job is advertised with. This job is advertised for superior French, superior communication in French, but only good command of English.

Mr Raymond: At the time of the interview, the members of the selection board would either conduct a part of the interview in French or could refer you to FTEC, the French training and evaluation centre, and ask that you undertake a test that would determine your level of competence in the French language.

Mrs Marland: I understand that, but I think these advertisements are discriminating. For a public service that says it is dedicated to employment equity—I cannot even go and apply for these jobs, because they are discriminating. They are not saying equal ability in our two official languages. That is the question that my constituents are asking me and that is why I raise it.

The Chairman: On pages 8, 9 and 10 of the 22 March afternoon sitting, what you have raised is pretty well covered. Mr Villeneuve was here at that time and you were not. I will allow just one more member who would like to speak; we have other business this morning. We wanted the report.

1110

Mr Runciman: I will try to be brief. I share many of the concerns Mrs Marland has expressed. I raised this issue in the House with respect to an incident in my own riding and I was booed and hissed by certain members of the Legislature. It is the old intimidation game whenever you try to raise this issue.

But I was approached by the St Lawrence Valley Personnel Association, some very responsible people in a variety of communities along the St Lawrence River Valley, who were concerned about a job at the Brockville Psychiatric Hospital for the head of personnel. Again, it required excellent skills in English and superior French-language skills.

I guess what Mrs Marland did not say, but what the clear implication here to many people reading these advertisements is that there is very clearly a bias towards candidates whose mother tongue is French. I think that is the concern. Perhaps one of the responsibilities this new council may want to take on is to take a look at the kind of advertising that is being put out by the provincial government with respect to jobs designated as bilingual and to consider the implications in terms of the concerns that these ads themselves are raising among many in the province. I think it is a legitimate concern.

I have written to the former chairman of the Ontario Human Rights Commission. If someone has a complaint about this, they really have no recourse. There is no provision in the Human Rights Code to prohibit

discrimination on the basis of language. Perhaps that is something the Legislature should be looking at as well in the future.

I gather this new council is not going to be in any way—you indicated you are going to be there in an advisory capacity, but I am wondering if you see your role in any way, shape or form as trying to determine what the concerns are out there among the public, the public service and so on with respect to the implementation of Bill 8. Specifically, have you given any consideration to a public hearing process?

Mr. Raymond: No, not to a public hearing process as such, but we have worked with the Human Resources Secretariat. We have worked with the Office of Francophone Affairs. I have met with a number of senior officials including deputies in the various ministries. I can tell you that there is a collective effort now to better inform the present employees of the government on the impact of the act. I think there was some misapprehension at the outset that people would be denied promotion opportunities or even jobs with the government. I am satisfied this is not taking place. The trained, trainees and training sessions that are now in place, the communication strategies in each and every ministry, I think will appease a great many of the concerns that have been raised.

Mr. Runciman: I do not share your satisfaction and my party does not either. Mr. Villeneuve has asked, and this is an official position of our party, that a select committee of the Legislature be established to review the implementation of the French Language Services Act to ensure that the designation of services to be provided in French, the criteria for designating bilingual positions and the policy towards bilingualism in government offices are consistent, realistic, effective and are not prejudicial to current employees.

You mentioned earlier that many of these concerns are unfounded. As I said, I do not share that view. I mentioned the job at the Brockville Psychiatric Hospital and a specific one at the St Lawrence College campus in Brockville in my community, where I have employees coming to me with concerns on a frequent basis, where now even a switchboard operator and so on, rather what we might call lower-down-the-ladder positions, are now designated and now require individuals of—

Interjection.

Mr. Runciman: St Lawrence College, Brockville campus, yes. It is designated as a bilingual campus. I understand that, but I think you also have to respect the nature of my area of the province. I think Mr. Nixon got quite perturbed when you mentioned that in signage, you want to do this in a responsible way and of course, one of the concerns—

Mr. J. B. Nixon: I was not perturbed by that.

Mr. Runciman: I guess you were perturbed by my point that it is not being done in a responsible way by this government.

I will indicate, for example, the Liquor Control Board of Ontario outlets that are changing to bilingual signs right across this province, not in designated areas alone. I contacted the LCBO and they said, "We are going to go ahead and do that anyway; we do not give a damn about the cost," because

it is reflecting their so-called interpretation of the cultural reality of Ontario. Those are the kinds of things that are happening.

I think Mr Breaugh mentioned a number of times in his comments that we would all like to see common sense utilized in the expansion or the appropriate use of French-language services in this province. In many instances that just is not occurring. All of us see unbelievable waste.

I suppose if you take it on an individual basis, it is rather modest in terms of the government's budget, but I gave an example—we have all seen this—a couple of weeks ago where I got, by Priority Post, from the Minister of Industry, Trade and Technology two thick books telling me all the names of the manufacturers in this province, one with an English cover and English names inside, and one with a French cover and English names inside. You tell me why they could not have had a bilingual cover and mailed that out and done it through normal mail? But no, we have this sort of thing happening all the time.

I would like to see and I think most of us could live with a sort of a based-on-need approach rather than this cover it, blanket approach, cost be damned. I am telling you, Mr Raymond, I am certainly—perhaps my area is unique, but I do not think so. I think there are growing concerns about the way this is being handled by the government and I think the commission has to take some degree of responsibility for that, because I do not think there has been enough sensitivity out there with respect to concerns. Many of them may be unfounded, I agree, because there certainly is not the understanding that all of us would like to see out there, but some of them are founded in fact.

I think that those of us who were around here during the passage of Bill 8 have a lot to answer for. I have said this before and I will say it on the record: If I have one thing that I am personally ashamed of in respect to my eight and a half years of service in this Legislature, it is the way Bill 8 was handled in this Legislature. There was virtually no meaningful debate, no division in the House. It was rubber-stamped. Party discipline was the rule of the day. I think when you look at a piece of legislation like that, which has such a significant impact on this province for many years to come, the Legislature as a whole was negligent in terms of fulfilling its responsibilities.

Mr Velshi: I heard the word "discrimination" being used and I think it was a very strong word here. I would rather look at it as an imbalance that is being corrected right now.

Just one word of caution to Mr Raymond: When you mentioned the French language and the progress you are trying to make in this province, no mention was made of your multicultural community. I just hope that in the process of trying to correct this imbalance, you do not create something within your own francophone community that we see is so prevalent in the other part of the province in terms of equality and employment equity. Although you mentioned the word "culture," I am not too sure I understood you to mean the emphasis being put on the francophone multicultural community that I know is right now kicking and screaming to become part of the major group.

Mr Raymond: If I may respond, when I use the words "French language" under the terms of the act, as a matter of fact I am talking of everybody who elects or sees fit to use the services of the government available in the French language. That may be a native French-speaking person. It may be a

person who has learned French as a second language. It may be a member of a multicultural group who has mastered the French language.

I think I made reference in response to Mrs Marland's question to l'Association multiculturelle francophone de l'Ontario, which is a very vital and vibrant organization. I was pleased to see that there is a rapprochement between the leadership of l'Association canadienne-française de l'Ontario and the leadership of AMFO. I think there is a better integration of the two groups.

Mr Velshi: My concern is that when the question was asked how many French-speaking people there are in Ontario, you mentioned half a million. I would rather see you putting it as a million because I get the impression that you are already dividing the two groups as half a million here and half a million there.

Mr Raymond: I was only using the statistical information available from Statistics Canada. It is the way the question is phrased, I guess, but I recognize the point.

Mr Velshi: Just a final comment: I do not get newspaper cuttings from people in my riding, because I think they know what type of reception they will get from me when they complain about correcting an imbalance. Maybe all the other members get them because the reaction is quite different. They use it as a tool rather than a solution.

I do not think it matters to me how much money is being spent in, again, correcting this imbalance. I am not too sure we should be looking at the amount of dollars and cents we are talking about, because it is a historical imbalance that has to be corrected. When this is over, I think it will be perhaps a little more pleasure to be in Ontario than trying to be on the Plains of Abraham on a day-to-day basis.

1120

The Chairman: I want to thank you, Mr Raymond, and your staff for being here this morning and bringing us up to date on your recommendations on what the Ontario French Language Services Commission feels is appropriate. I am sure we will now be able to conclude our deliberations with regard to the commission and how the committee feels it should be directed. Your input is very worth while and we thank you for coming this morning.

Mr Raymond: If we can be of further assistance, we are at your disposal. Let us know.

Mrs Marland: Is this summary, the "Commission's Recommendations on Post-Commission Issues," Mr Raymond's speaking notes from this morning?

The Chairman: It is all on the record, from my understanding.

Mrs Marland: Could I just make a request again—I made it about two weeks ago—that when we have representatives of any of the agencies, boards and commissions in front of us, we have a hard copy of their presentation before they start to speak. That means they have to know that ahead of time and we request that that be available. We have had it in the past in a lot of the committees' deliberations and it means we do not have to wait for the

Hansard in order to be able to ask questions based on what the person has presented.

The Chairman: That would be a policy of the committee. However, I would want approval of the committee to authorize our clerk to request that before it would happen. It is not something that just happens automatically. However, if you feel that strongly, you would be quite in order to have a discussion with regard to that. I would want the approval of the committee to have the clerk ask for that.

Mrs Marland: For the clerk of the standing committee on resources development, of which I am also a member, when any groups were coming before the committee, that was a routine process. It is very helpful.

The Chairman: Perhaps it could be a request to the clerk, but there is no law that says that would have to be fulfilled.

Mrs Marland: No, I am simply requesting it.

Mr Velshi: That is a good idea. At least we would know what we were going to be hearing. This is a chance to be able to respond properly. If it is possible, we should do that.

Mr Breaugh: I disagree very strongly and would give the same response to anybody who asked me to speak to them and asked for a hard copy of my speech. If you want to hear what I have to say, you be here when I say it. You can ask me a million and one questions afterwards. If you want me to write you a letter, I would be happy to write you a letter but I do not send out, in advance, copies of any speeches I might give because there are not any copies until after I give them. If you do not like it, do not ask me to come.

Mrs Marland: When I say "in advance," I mean when they are here. Certainly other committees do that.

Mr Breaugh: Of course it is hard to hear them when you are not here.

The Chairman: Thank you. I believe now that it would be appropriate for us to go in camera when we deal with our research briefings from our research officer with regard to the briefings on the Royal Ontario Museum Board of Trustees and the Stadium Corp of Ontario Ltd. So with the consent of the committee, would it be agreed that we go in camera? It is agreed. This committee that is in session is adjourned. We will go in camera.

The committee continued in camera at 1125.

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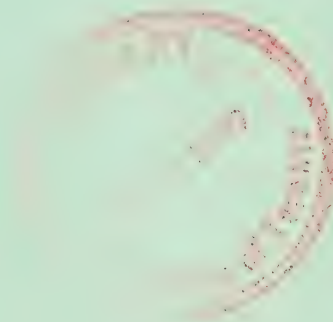
STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ROYAL ONTARIO MUSEUM
ORGANIZATION

TUESDAY 29 AUGUST 1989

Afternoon Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitution:

Lipsett, Ron (Grey L) for Mr Ballinger

Also taking part:

Lupusella, Tony (Dovercourt L)

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

Witnesses:

From the Royal Ontario Museum:

Kierans, Thomas E., Chairman

Young, Dr T. Cuyler, Director

Shoreman, Michael, Assistant Director, Finance and Administration

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday 29 August 1989

The committee met at 1411 in room 151.

AGENCY REVIEW: ROYAL ONTARIO MUSEUM
(continued)

The Chairman: I call the standing committee on government agencies to order. This afternoon we are dealing with the Royal Ontario Museum board of trustees. With us is Thomas Kierans, chairman of the board of trustees. Mr Kierans, will you introduce those with you for the purpose of the record, and perhaps you can begin your presentation.

Mr Kierans: Thank you very much, Mr Chairman. We certainly will not take much time. We have furnished answers to the research officer and you have his report before you. We do not intend to do anything more than highlight that.

I am the brand new chairman of the Royal Ontario Museum with about six weeks on the job, and I will be relying heavily on my colleagues. To my left is Dr Cuyler Young, director and chief executive officer of the museum. To my right is Michael Shoreman, assistant director, administration and finance.

Very quickly, and by way of presentation, as you know, the Royal Ontario Museum is Canada's largest and most prominent museum. It has the most diverse collection of any province or state in North America. Its prestige and success in recent years I would say would be a function of the following. First and foremost, the support of the Ontario government, which accounts for approximately 82 per cent of its operating budget.

The second, of course, is the commitment and professionalism of its staff. Next is the dedication of its volunteers of whom there are more than 600, a very important part of the museum. Fourth is the importance of the board of trustees and the various committee members who logged more than 3,000 hours last year in unpaid Royal Ontario Museum work.

Next has been the generosity over the last number of years of the private sector, both individuals and corporations, in terms of capital giving and in terms of the sponsorship of the various exhibits.

The importance of ROM as an educational enhancement instrument cannot be underestimated. Last year it received more than 200,000 students. Finally, in terms of its outreach programs, it has gone into literally hundreds of communities outside of Toronto, working with students and with educators, as well as in terms of recognizing the multicultural nature of Toronto itself, in terms of working with various of the multicultural groups.

The fourth goal of its mission statement, which is included in the report to you, is to provide the public with an enjoyable and aesthetically pleasing educational experience. We believe we do this.

For the last number of years, the Royal Ontario Museum has been deeply involved in a gallery development program to further advance its ability to communicate and educate the public. I would like to call upon Dr Young for a

brief exposition of that, and after that, we will turn it back to you for questions.

Dr Young: I will speak to the issue of the gallery development project and other aspects of physical expansion. As you probably know, for 20 months during the major renovation and expansion program in the museum which took place between 1978 and 1981, the museum was closed to the public and all galleries except one, the dinosaur gallery, were emptied. I know of no museum in history, certainly no museum of this size, that has ever taken the risk of closing all of its galleries. It was a considerable risk, but it has also turned into an enormous opportunity for, gradually, over the period of some 15 years, we were able to completely reinstall all of the galleries of the museum up to first-class standards.

Indeed, I think it is fair to say that in museum gallery development, the ROM is leading the world at the moment. Some years ago, as our overall gallery development plan, we produced a two-volume work called *Mankind Discovering*, of which we printed 5,000 copies, and it has now sold out. I do not know of a single major museum in North America or Europe that does not have those two volumes written by the ROM. The people who are copying us most closely in our gallery development program are the people at the British Museum of Natural History in London. They are doing almost as good a job with our plan as we are, but not quite.

We have in total in the museum, 235,000 square feet of public gallery space to fill. So far we have filled about 110,000 square feet. That makes us, in terms of public display space, the third largest museum in the British Commonwealth and the fifth largest museum on this continent. Building those galleries is a monumental task. Depending on the nature and size of the gallery, it takes anywhere from two to six years to plan and install a major museum gallery. Most museums in the United States are doing that at a rough cost today of US\$300 per square foot. We are doing it for an average of C\$150 per square foot.

The total overall project, as approved by the board, is to cost \$42.5 million. By 1993, roughly—give me 1994 for a little bit of slippage—we are going to have 80 to 85 per cent of that 235,000 square feet complete. It has already put the museum on the map professionally from the point of view of gallery development, and when it is complete, I think it is going to give George MacDonald of the Canadian Museum of Civilization a damned good run for his money, and he has three times as much as we have.

Fortunately, thanks to capital grants from the government of the province of Ontario, we have recently been able to reinstate a capital expansion project that had to be cut for remedial reasons during the 1978-82 expansion and renovation program. That project is specifically what we call in our local jargon, the Planetarium Plaza project, which involves underground construction underneath the plaza in front of the McLaughlin Planetarium and space running in under the southeast wing of the building. Aside from providing us with space that was originally planned for back in 1978, but which we could not afford to build, this will also be a major boost to our public because it will provide subway level access from the Museum stop directly into the museum.

This is a project that is just now in its planning stages and which one would be able to give a much more detailed report on within a year or so. If the engineering of the situation permits, and there are concerns with regard to noise and vibration from the subway—and we have yet to hear from the

engineers whether those vibrations particularly are going to be taken care of through the genius of engineering, but assuming that they are—it is our intention to move the Canadian decorative arts department, which is the department that occupies the very attractive building just across the street, the Sigmund Samuel building, from that building up to the main building, and finally have all of the curatorial departments and all of the displays whole, together in a single institution.

That gallery development project is the single, biggest activity of the institution at the moment, both in terms of money and in terms of blood, sweat and tears, as Winston would have put it.

1420

The Chairman: I have some questions I would like to lead off with. It has to do with the board of directors. They meet about 10 times a year. Regarding the 20 standing committees, are they made up of the board of directors or what are they made up of? Can you explain to me?

Mr Kierans: They are a combination. There are members of the board of trustees on each one of them but also we go outside the select people with specific expertise, be it finance or whatever the case might be, who are not on the board of trustees who sit on these committees.

The Chairman: Are they paid a per diem for sitting?

Mr Kierans: No, they are not.

The Chairman: There would be some members of the board of directors on those committees when they would meet.

Mr Kierans: Yes.

The Chairman: The director of the Royal Ontario Museum, according to the information I have, has very large responsibilities. Does he report directly to the board? He hires, he looks after all the staff. I am wondering when he hires people or dismisses people, is that his decision alone.

Mr Kierans: First of all, Dr Young is the chief executive officer of the museum. Through the legislation, he reports to the board of directors through the chairman of the board of directors, which is responsible for overseeing all of his recommendations. It is his prerogative to recommend additions, deletions, dismissals, new positions, whatever the case might be.

The Chairman: Are they all approved by the board of directors?

Mr Kierans: Not automatically.

The Chairman: There are 71 other appointed committee members. They are the ones that sit on the committees.

Mr Kierans: That is correct. They are drawn from outside of the board of trustees to help us with specific issues.

The Chairman: And they are volunteers?

Mr Kierans: Yes.

Mrs Marland: The figure that you give of the 200,000 students is very impressive and probably particularly so when you identify that body separately because I am curious to know what the adult or casual visitor numbers are. Are the 200,000 students those that are on prescheduled visits that you control and for which you record the numbers?

Mr Kierans: That is about half and half. I think Dr Young can do a better job than I.

Dr Young: I think there are in your briefing papers some specific statistics on the number of school groups that are free-wheeling, that is to say, they simply book and come in and take care of all their own instruction as opposed to those school groups that come in and take instruction from our specially trained teachers in the education department. Then there are a variety of other students as well who come in but those are the two main groups. If I recall correctly, there are more conducted students than there are free-wheeling students.

The rough figure of 200,000 school kids of all ages in the museum is included in the total attendance figure that you were given of 1.3 million. So our adult, nonstudent, visitor population, which would include a number of young people—just a family coming on Saturday, there might be two adults or one adult and three school children—they are another 1.1 million of our visitors.

It would be impossible to get the actual number of young people under the age of 18 who attend the Royal Ontario Museum but it would be a great many more than 200,000.

Mrs Marland: I would be interested to know what has been your most successful exhibit in the last 10 years, recognizing that Tutankhamen was 10 years ago.

Dr Young: Dinosaurs.

Mrs Marland: It is.

Dr Young: We have a story in the museum that when people come into the museum they ask for these three things in this order: first for the dinosaurs, second for the Egyptian mummies and third for the washrooms.

Dinosaurs will always win in a museum context. Leaving that area of the situation and turning to what might be described as a more artistic type of exhibition, our most successful exhibition has been Treasures of the Holy Land, which I believe was around 263,000 people who attended that exhibition.

Mrs Marland: So the Tutankhamen exhibit does not even rate.

Dr Young: Oh, no. We beat King Tut hollow with Treasures of the Holy Land, but remember, King Tut was a while ago.

Mrs Marland: It was 10 years ago.

Dr Young: It was a good 10 years ago and because we were closed at the time for renovation and expansion, it was in a somewhat unusual venue. Some people in the city had a little difficulty associating Egyptian antiquities with the Art Gallery of Ontario. I am sure that had somewhat of an effect on attendance from a psychological point of view.

Mrs Marland: I wonder if we could deal with the crass side of money in terms of museums. For those of us who support museums and their work and their raison d'être it is sometimes not easy for us to explain to those people who are looking for affordable housing as to why we are spending any money on preserving all the wonderful history and natural science that museums do preserve for us.

In the comments you read that were prepared for us, there is a statement here that your base funding increase this year was less than four per cent while our provincial civil servant salaries were increased at six per cent. This says almost, I think it is actually six per cent.

The balance of funding something as fabulous and as valuable as the Royal Ontario Museum against all those other draws for provincial taxpayers' dollars is something that I know you understand and are very sympathetic about. I just wondered first of all, if you would comment on where you are with your funding and recognizing that you are down four per cent from where you were a few years ago. I have just for the moment lost the graph of the years. I am looking at page 15.

It leads into the question about what are you doing about nongovernment sources for funding other than the obvious one of persuading your loyal supporters to bequeath donations and so forth?

Mr Kierans: Perhaps I will start. The first thing I think we have been able to do over the last three or four years is to reduce the government of Ontario's contribution to the operating budget from about 86 per cent to about 82 per cent. It is what we do outside of that that has a lot to do with it. How we sell our admissions, how we sell our services, how we make ourselves more responsive to the community, that is an important part.

A second factor is our ability to be ingenious. That involves setting up ROM Enterprises, for the sake of example, which enables us to sell on a private-sector basis varieties of products that will raise funds, anything from jogging suits to copied artefacts, all the way across the board. That also is a source of income.

Thirdly, we have to get into the community in a bigger way and to broaden it. Corporate sponsorships have been a good example of this whereby corporations will come in and sponsor specific exhibits, temporary exhibits not permanent exhibits. That is very important. I am staying away from capital funding. I am just dealing with the year-by-year revenues.

Finally, I would say it is very important that we have to access other levels of government. This institution is extremely important to Metro, for the sake of an example and we do not have an operating grant from Metro. Certainly, as the new incoming chairman, this becomes a priority for me.

1430

Second, the federal government is making substantial grants to other cultural institutions in other parts of Canada, and without in any way taking away from the allocation of a federal global budget for Ontario or for Toronto, we have to access that as well. These are some of the challenges we have to have a good run at.

Mrs Marland: Is there an admission charge?

Mr Kierans: Yes, there is.

Mrs Marland: How much is that?

Dr Young: It works out as an average per visitor of just pennies over \$3. The flat charge for thee and me would be \$5, but there are special rates for seniors, there are special rates for families, there are special rates for students, so you end up with an average admissions income of just a penny or two over \$3.

Mrs Marland: I appreciate your not including thee and me in the seniors.

Dr Young: Obviously, madam.

Mrs Marland: What is the maximum family rate, because I want to make a comparison—

Dr Young: The family rate is \$11.

Mrs Marland: For any number.

Dr Young: The family is \$11 for up to two adults and three children.

Mrs Marland: When you look at your own fund-raising and what it costs a family to go in compared to the current \$7 per adult for a movie, I can appreciate that you are very much in a competitive position with the rates you charge.

Could you tell us how you have addressed the concerns that the Provincial Auditor identified in 1987? I will just quote three of the comments here. One was: the "inadequate invoicing procedures which could result in errors or misappropriation of funds." That is a pretty strong statement that the auditor must have made; also, the "accounting procedures would fail to detect missing cash reports and receipts," and the "internal controls over donations are weak."

Those are serious. I would like to place on the record your comments.

Mr Kierans: Mr Chairman, with your permission I will call upon Mr Shoreman.

Mr Shoreman: I should clarify that the comments you see there were not as a result of the Provincial Auditor's report. The Provincial Auditor picked up those comments from the management letter from Clarkson Gordon to the management committee of the museum. The Provincial Auditor reviews Clarkson Gordon's working papers, and in reviewing the working papers these comments were made to the board of trustees of the ROM by Clarkson Gordon in its management letter, not in Clarkson Gordon's audit report.

I should say also that when these comments were made, they were already corrected; for instance, the comment on the invoices and the numbering of invoices. We now have prenumbered invoices. We account for the continuity of invoices and we follow up on any outstanding numbers. There was no evidence of any money going missing. It was just seen as a weakness in control. We did fix that up.

The other one about the prenumbered cash reports: We now have

prenumbered cash reports. At that time we were reconciling the cash back to the cash register tapes, and that still goes on. That is corrected.

The weakness in internal control on separation of duties on the receipt of donations and the issuance of tax receipts now is corrected. The tax receipts are now issued by the accounting department.

Subsequent to receiving the reports from the Provincial Auditor, we had Clarkson Gordon go in again just to make sure that things were corrected to its satisfaction. As you can see in the comments here, Clarkson Gordon has said that things are fixed to its satisfaction. We are satisfied that any weaknesses in controls that were there are now corrected.

Mrs Marland: That is good news, obviously. I am sure it was for you too.

Do you have just one or two single long-term goals other than what Dr Young has identified as the completion of the space that is available with new galleries? In layman's terms, I assume that means new exhibits, and those, I presume, are permanent exhibits you are speaking of in that category.

Dr Young: I am speaking of permanent exhibits, yes.

Mrs Marland: Do you have any near-future or long-term ambitions for the ROM in terms of permanent exhibits you would like to achieve; also, in what visiting exhibits you are going after?

Dr Young: Let me start with the visiting exhibits. There is a certain amount of sheer serendipity there, because I would say somewhere between 60 and 70 per cent of our special exhibitions we take as packages, say from the SITE program, the Smithsonian Institution travelling exhibitions program, or we get them from other museums. We get them from Ottawa or Montreal or Vancouver or other places in the United States. The remainder of them we generate ourselves.

I will confess that our principal interest in the special and temporary exhibitions program is to offer a variety of programs, that is to say, a program that touches on all of the subject areas that are dealt with and all the art areas and cultures that are dealt with by the Royal Ontario Museum, as much as possible.

There is automatically the goal of quality. It has to be a first-class exhibition. Second is sufficient variety to cover the waterfront of areas that we are charged with dealing with. Third is exhibitions that are interesting and stimulating to the public and that will make the turnstiles turn.

There is no question but that there is a practical element in any museum's special and temporary exhibition program, because it is demonstrable from coast to coast that special exhibitions have a major impact on attendance. They give the public a sense of movement and of action and of change within the museum and that keeps people coming.

In fact, when we do our estimates for attendance for the year for each one of the 12 months, we do it in a two-tiered system. We estimate what we call our base attendance would be for the month of October. Base attendance means how many people we estimate will come to the museum with no special exhibition on. Then we have what we call incremental attendance estimates, which is the number of additional people who will come to the museum if there

is a special exhibition on. It is a significant and notable increase, and that has a direct financial impact on the operating budget.

But first of all is quality; second, breadth of coverage; third, practical considerations.

In terms of the long-term permanent gallery program—of course, "permanent" is a word here that should be in inverted commas. There is no such thing as a permanent gallery, just as there is no such thing as a permanent museum. I mean, in 5,000 years we are not going to be there. Permanent is a long time.

Miss Roberts: I might not be here either.

Dr Young: We certainly would be senior citizens by then, would we not?

The principal goal, again, is to cover adequately and well all of the subject areas in which the museum has collection holdings and does original scientific and academic research and to cover them as thoroughly as possible and to cover them in a way in which the public can understand them. That is the real underlying goal of the gallery development project.

We are particularly proud of our introductory gallery, Mankind Discovering, which is the first effort ever of any museum to present in a three-dimensional display the story of how academic research is done, not just how it is done in a museum but how it is done anywhere. We have done evaluations on that gallery after it opened and 85 per cent of the visitors who go through that gallery get the message of the gallery, get the message that we intended initially for the gallery to convey.

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That is the ultimate goal; that is the ultimate purpose in all galleries. You can put up the most wonderful gallery in the world, and if only two out of 100 people who walk through it get something out of it, it has been a waste of time and money. If we can consistently build galleries where 85 per cent of the people who go through the gallery get the message we intended to send them in the construction and design of that gallery, then we are achieving our purposes in the gallery development project.

The Chairman: Do you feel that is happening today?

Dr Young: The 85 per cent figure goes with that particular gallery. I could mention a couple of other galleries that on those statistics I would describe as a bomb. They would still be better than any gallery in the Metropolitan Museum of Art in New York, but by our standards they would be a bomb. You cannot score 85 per cent every time, but we can probably score consistently over 50 per cent.

Mr Breaugh: A couple of things I would like to pursue with you. One of the things we never figured out is who is responsible for these things called museums. As you try to go through the funding process for galleries and museums of various kinds throughout this country, there sure as hell is no rhyme or reason as to how the funds are flowing, who gets them and how they might be co-ordinated. It continues to be an ongoing problem in your instance as well. Is the big problem capital funding or is the bigger problem ongoing operational funding? Which of the two nuts would you care to send somewhere else?

Mr Kierans: It would depend on which particular year you are in, and I am not being facetious. If we are in fact going into a recession, as many people think we are, operating funding is going to be a very serious problem for the museum over the next 18 months. Attendance is off and it is off very substantially. It is not just the museum; it is all the way across the city, everything except the SkyDome, I suppose, which is masking a significant decline. We have had to cut back our operating budget by almost \$800,000 for the forthcoming year because of the attendance issue.

On the other hand, of course, as Dr Young has pointed out, we have a massive capital expenditure budget for the gallery development which amounts to \$42.5 million to 1994, which we monitor scrupulously to make sure the funds are in hand.

I am not sure there is an answer to that, honestly. I think it is both, and I think we have to manage both almost as separate entities.

Mr Breagh: In my experience, if you asked me to make the choice there, I would much rather take the capital side of it, because I can go out and stir up all kinds of interest in building new things. I can find the folks who are interested in something that nobody else in the world might be interested in and you can generate a lot of enthusiasm around doing that kind of thing. My headache has always been on the operational side. Who wants to donate money to an arena after it has been up for 10 years?

Mr Kierans: I agree with you.

Mr Breagh: Nobody wants to scrape the ice or paint the seats or anything like that. But I am perplexed a bit in trying to analyse how we fund these agencies like yours.

Let me start this way. Do you have any kind of collective role in petitioning governments? Is there any kind of agency that you and other museums, art galleries, related agencies such as yours would turn to, to say, "If you'd only just give us a sensible approach to this and we all present one common set of requirements to governments at all levels," it seems to me we might get to some point where we have some logic behind that. I know of no such body. Is there one?

Mr Kierans: I do not think you would, but let me have Dr Young have the first crack at it.

Dr Young: The closest thing to such an organization, I guess, would be the biannual meetings of the chief executive officers of the 11 agencies that report to the Ministry of Culture and Communications. We meet twice a year with the deputy minister, and I can assure you that all 11 CEOs sing the same song, sing it in unison and I hope sing it in harmony and in tune.

Also, the Ontario Science Centre, the Art Gallery of Ontario, the McMichael Canadian Art Collection and the ROM have banded together, lobbied for and successfully won a major three-year program with the Ministry of Tourism and Recreation for a joint push on the tourist industry in the New England states and upstate New York, and I believe Pennsylvania and Ohio as well. That would be an example of a group of cultural agencies such as the ROM getting together and making a joint submission and joint approach to the government, but in general I think it is fair to say that we go as individual institutions.

Mr Breaugh: There is no such national organization, is there?

Dr Young: There is the Canadian Museums Association, in which the ROM, simply because of its size and dominance of the museum community in Canada, is a fairly major player. The CMA does a lot of joint lobbying, but primarily on the federal level, in Ottawa, and primarily over issues that come up that represent serious threats to museum financing, such as the nine per cent tax. This could be a very serious problem for an institution such as ours, as indeed could the recent salary taxes in Ontario in place of OHIP payments. Those are serious issues for us that eat directly into our operating budgets. In the face of those sorts of things, the museums of the country have a very strong tradition of banding together and making joint submissions and that sort of thing.

Mr Breaugh: We have reviewed a number of agencies, for example, that are located in different parts of Ontario. I know they are trying to put together a common front, touch base with one another, at least, and act in unison towards the government, if they can, but it seems to be a very difficult task.

Let's take the ROM as an example. It seems to be Toronto's museum. I know you have worked for a long while to get it out of the city, reach out, bring young people in here. Still, I think if you went to the city of Cornwall and said, "Would you like to make a donation to the Royal Ontario Museum?" it would be a little stretched to figure out what the hell the connection is, and so would a number of other communities. You have not even managed to tap Metro yet. So there is that kind of problem.

It is perplexing, because there are a number of really outstanding agencies like yours all over Ontario that many of us as members of the assembly have never been to. If we wanted to encourage people from our constituency to go to Old Fort William, I would be really hard pressed to tell you how you would take a group of school kids from Oshawa and get them to Old Fort William, never mind what it has to offer. The same thing is true in part for people from other extremities in Ontario who are trying to get to the ROM. That is a problem we have not resolved.

Let me move to another one. The operational side of it seems to be a problem. Without getting into your own internal organizational difficulties here, you have had to do some cutbacks. Are you anticipating that you are going to have further difficulties with operational budgets, union contracts and things of that nature?

Mr Kierans: I think there certainly will be difficulties; there always are going to be difficulties. Number one, we are in negotiations now. We hope those will be concluded successfully in the fall. The problems are very straightforward. Toronto is a very expensive city to live in, on the one hand. Second, on the other hand, 82 per cent of our support comes from the Ontario government, which cannot continue to ladle out enormous amounts of money. Third, I think the figures show we are doing very well in every category away from the Ontario government in terms of increasing our take.

What we have done over the last three to five years is that we have moved everybody within the museum to what we regard as market-based salaries as opposed to their having to take "lower than" for the privilege of working in it. Whether those arguments are going to be accepted or whether the difficulties of individuals living in this city are going to become paramount, negotiations are going to have to tell.

Mr Breaugh: The reason I want to pursue that a little is that I have a real problem with this. I cannot figure out why someone is expected to accept less in terms of compensation because they work for something like a museum than if they were working for the city of Toronto. I have that basic problem and I have to understand that there would be a large number of positions on museum staff who would not be highly paid by anybody's standards, yet they are expected to live in a city where the cost of living is getting astronomical. So it seems almost an insoluble problem.

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Mr Kierans: No, we think we have got it there. Dr Young, I think, could have a crack at that.

Dr Young: Yes. In my judgement and in the judgement of a recent labour arbitration on this issue, the museum as of now is paying market salaries. In conjunction with the principal bargaining unit within the museum, Ontario Public Service Employees Union Local 543, we did a joint management/union salary study. At this moment in time we are in agreement that our salaries are at market level. The problem now is to sustain them at market level. There is absolutely no question that as recently as five years ago the museum was subsidizing its programs on the backs of its employees. There is no question about that.

I have been an employee of the museum for 26 years now, so I know of what I speak. I have been director for about only four years and I remember griping like hell about my salary, and it was quite true. I was cross-appointed to the University of Toronto as a professor in the department of near eastern studies and if I could have dropped my job in the museum and simply taken up the job that I already had on the cross appointment in the University of Toronto my salary would have immediately gone up 26 per cent, given my level of seniority and expertise and position within the university. So there is just no question that up until five years ago that was the case.

As a management and as a board the conscious decision was to bring museum salaries to market level and that we have done in the last four years. Now the problem becomes to sustain them. If you have inflation in Toronto at 5.6, if you have six per cent labour settlements to sustain your market salaries and if your base grant is 3.95 per cent, you are in a losing position.

Mr Breaugh: Yes. That would be my concern. Let me just pursue one other area with you. It is an old one, the quandary I am sure that many museums face throughout the world. Some people seem to think that a museum is a place that should never change, it should keep all those screaming kids out of there and be pretty careful about the adults that it lets in too. It should be a place for quiet reflection and research and very artsy groups should gather there every now and then and you might perhaps have a black tie event once in a while. The only problem with that is I cannot think of a reason in the world why 90 per cent of the population should pay for the pleasures of the other 10 per cent.

You seem to be taking a slightly different tack on things, one that I like. I believe that a museum ought to be a place that grows and changes like the rest of the world does. If there is a purpose for contributing large amounts of tax dollars to supporting museums, it is simply because the museum serves some kind of a function to the community as a whole. I know you have had a little bit of criticism about this kind of approach to the thing, that there are too many people sneaking in the doors over there. Have you resolved

or come to some kind of an agreement on how much the Royal Ontario Museum is a place for learning and for research and how much of it is there for the people of Ontario?

Mr Kierans: It is a trustees' issue, Mr Breaugh, so I will respond to it with Dr Young's permission. The Glassco royal commission dealt with it 25 years ago. At the time, of course, the museum was an appendage of the University of Toronto. It made exactly the same points you are making. The vice-chairman made the same point in saying how does the state allocate its dollars when you have need for low-rental housing, for the sake of an example.

The upshot of it is, in all the ramifications of the comments I am going to make, the museum is an educational institution. It is an educational institution both to advance the borders of knowledge from the point of view of the collections that we have and the professionals who are dealing with those collections on the one hand, and in terms of advancing the borders of knowledge of the population at large, everybody that we serve, be it small towns, people in Toronto, schoolchildren or whatever the case might be. As a consequence, a very distinct effort has been taken to increase the popularization of the institution and without question the numbers show that this has been successful.

Does this put pressure on the internal dynamics of the institution? Without question. The curators obviously did not become professionals from the point of view of spending 60 or 80 per cent of their time doing things to involve the broad public at large. They are professional specialists. The exhibitors are under an enormous amount of tension and they too are professionals. What we have to do is to balance those things. Certainly, over the last number of years, we have made quantum strides towards the popularization and that will remain so.

Dr Young: Just to add a comment to that, in the museum's efforts to open its doors—and this is always symbolized to me by the fact that if you walk past the front of the museum today you will notice that they are glass doors and you can see in. I do not know whether you remember those great, huge, oak, wooden doors that looked like they ought to be on Fort William, not on the Royal Ontario Museum. That symbolizes for me the direction we are trying to go in and what we are trying to do—we have glass doors, so that people can see inside and feel themselves welcome.

But we have a problem here with what I describe as perception lag. The public, large swatches of the public, still perceives the Royal Ontario Museum and, indeed, museums in general as not their thing, as not populist sorts of organizations, of "not really having anything that is of much interest to me." So we are going to see a constant lag between what the museum is doing and the face that the museum is presenting to the public and the public's ability to respond to that. Now, I am convinced that the public will come along, but there will be a definite lag there.

We can see that quite clearly in the results of the baseball exhibition. The baseball exhibition at the Royal Ontario Museum at the moment—for which we have been severely criticized in the press, by a number of old prunes, in my estimation—is a superb exhibition. It is a magnificent piece of museology.

It is a very professional presentation and an important statement about social history. It is an important statement about blacks and the integration of blacks in North American society, just to pick an example; it has important statements about women and the role of women in society; it has important

statements about kids and the role of kids in society, all based on three-dimensional collections, all entirely proper and appropriate to the Royal Ontario Museum. Attendance is very poor.

The public has had a lot of difficulty associating baseball and the social history of baseball with the Royal Ontario Museum. It is a classic example of what I call perception lag, and it cannot be the last exhibition of that type that we do. I am not saying that we should do nothing with that type of exhibition—please do not misunderstand me—but my guess is that it will not be until the fourth or fifth time that we have done an exhibition like this that significant swatches of the public will begin to tumble to the fact that, "Hey, it ain't some sacred temple to the ancient Egyptians, ancient Greeks, or stuffed mammals; it is more than that." So there is a real selling problem there on that.

Mr Breaugh: I concur with the notion, whether anybody else believes it or not, that museums are okay. A lot of people would enjoy them if they actually found out where they were and what was happening in there. Part of what a number of our agencies try to do, though, is to bring in a cross-section of the community. When you are trying to reach out to these folks, it sure helps to have some of them on the board of directors.

I do not quite know how to phrase this politely, so I will not even bother to try. I read, for some reason that escapes me now, the *curricula vitae* of the board of directors of the Royal Ontario Museum. There is not a lot of dirt under the fingernails when that board meets. This is a pretty select group of folks. I bet they do not even cuss too much at their board meetings. Is there any attempt made to kind of get the board to be more reflective of the community in which it is found? That is about as polite as I can get.

Mr Kierans: That is a fair comment. First of all, I am not going to duck behind the fact that the government makes 15 out of 21 appointments. That is nonsense; that is not what it is all about. The museum generates its own interest and inevitably people who become involved in the museum, through the volunteer organizations or whatever the case might be, tend to get on the museum board because they are interested in the museum, regardless of who makes the choices.

Our challenges are going to be to get more communities involved in the museum. Speaking personally, I do not believe that the answer is to go out and appoint individuals simply as cross-representations of various groups of society. I think the intent has to be to find groups of society which are sufficiently interested in the museum and involved in it that we can appoint their constituents as members of it. We have to do more about that, no question about it.

Mr Breaugh: Not to pursue it a great deal, but it does strike me that there is a problem there that we ought to address. I would prefer not to see some great, new affirmative action program cranked up for the Royal Ontario Museum. It would be nice to think that we could sit around and wait until we have all these different communities involved with the ROM and we could make our appointments from them. I am not quite sure you have that kind of liberty or that kind of time frame in which to work, and I know it has been there for a long time and it will be, no matter what we do. But I do think it is worthy of your consideration to see what you could do and what you could think about that would involve other parts of the community and make them feel very much a part of that. It is a very fine institution that is over there.

Mr Kierans: That is valid. I want to go back to Cuyler's point about perception lag and what we do in our outreach programs. After all, all the multicultural elements of this particular community collect, have collections, history and artefacts; of course for that very reason alone, we are reaching into them. We have a strong program and, as we do that, we bring them back into us. What we have got to convince them of is the fact that we want them too, as opposed to just their possessions. That is going to be a big challenge.

I am not a sociologist. I would predict that if we just let events run their course, then in seven or 10 years, the makeup of the board of trustees would be quite different from what it is today. As to whether we are allowed to run our course or not, that is not for me to say.

Mr Breaugh: Good luck to you.

1500

Dr Young: I have a supplementary or whatever they call it. We of course have a full-time member of staff devoted entirely to the task of reaching into the multicultural community. She is a first-class employee and is doing a great job.

Just to give you an example of some of the kinds of problems we face, we run into cultural and ethnic groups in the city--the one I am thinking of I will leave nameless--where in the home culture there is simply no tradition at all of going to museums. They do not have museums; they just do not exist. In fact, there is one museum in this country that I am thinking of, and it is entirely reserved for politicians to visit for a variety of complex reasons.

Mr Breaugh: We cannot take insults like that.

Dr Young: No, it was not an insult. It is a sociological, historical fact.

Mr Breaugh: I have been called worse.

Dr Young: People from this culture group simply do not go to museums. Our gal has been working with this community and I am delighted to say that in the last year or year and a half--it happens to be a visible group--I can report that I am beginning to see some of them in the museum. They were not there at all three years ago. It is going to take a long time to crack that. Whereas you go to the German community in Toronto, they all went to museums in Germany and they have no cultural problem with it at all.

So the issue here to a very considerable extent is that the more the people in this group become not X any longer and Canadian-X, the more they are going to come to us, the more they are going to relate to us and the more we are going to be able to do something for them and pull them in, as the chairman says, to our activities and get them involved in the museum. Then they are going to pop up on the board of trustees and in a variety of other places where they can do us a great deal of good and make a significant contribution to the programs of the institution.

Mr Lupusella: You forgot to mention Italy, the capital of museums, of course.

The Chairman: That is next on the list.

Dr Young: That is really surprising, because the little booklet I had in front of me on the Royal Ontario Museum happens to be the Italian one. There is a German one down underneath. We have bulletins on the institution in seven languages.

Mr South: As a person who was born and brought up in Toronto and now an expatriot, I must say that a museum is a place that I have always enjoyed and always associated with Toronto. I go back to the time when a teacher used to have to worry—talking about field trips when I was a kid—about whether we could all get six cents to go down to the museum. It was three cents to go down and three cents to come back. Now I hear about schoolkids going to Italy and all this kind of carrying on and I think I was born too soon.

You have a great place. I guess what we are talking about today is simply some of our thoughts, because we are not involved with you on how you can improve it and make it even better. I see one of your problems really is parking. It is a problem here at this Legislature too. I am always intimidated and a little appalled by this great number of buses we get out in front of the Legislature. You have to kind of thread your way through them. You are having the same problem in front of the museum with all the school buses there. I think what we jointly need to look at is underground parking. Let's put it under the park. I do not think it will bother the squirrels.

1505

Mr Breaugh: It might clog up the subway a bit.

Mr South: Well, there is a little space in between there.

I think underground parking is something this Legislature has to look at and that you people have to look at because, for whatever reason, I do not like all those ruddy school buses parked out in front of the museum there. It seems to detract from it. I do not think it is just aesthetic.

Mr Kierans: The point you are making is quite the opposite to the one Cuyler was making. There is a perception lag. To me, the best single advertisement that the museum has is those bloody school buses.

I will never have a better chance of telling the rest of the world exactly what Cuyler was talking about, that we took off the wooden doors and put on the glass doors. It is really important. Sure, parking is a problem, there is no question about it, but parking is a problem with the SkyDome too. It is not a big deal. People are taking public transit. Anyway, we do not have the money for parking. That is the bottom line.

Mr South: I do not know, I think it is something we should all think about. Another question comes to my mind. I often walk past the museum on my way up to the apartment. On many nights there are a lot of chauffeur-driven limousines parked in front of it. You know, you look like you guys are throwing parties for the great Gatsby or something. I am intrigued.

Mr Kierans: That is a valid comment. That is the question and I will take it seriously. We have to raise funds and you know where we get them, so we have a Royal Circle Club whereby corporations kick in \$2,000 a year. It is getting to be a significant component of financing for us.

The deal is very simple; under no circumstance do they have any special prerogatives during the regular hours of the museum, ever. The public always

dominates. That is the end of that. When the museum is closed, if such groups wish to lease the facilities and pay for the expenses in addition to that, for whatever purpose, so be it. That is a commercial, alternative fund-raising approach that we have chosen to develop. But you will not ever see that during museum hours.

Mr South: That leads into something else I want to discuss. What are your possible alternative sources of revenue? As I calculate it, you are getting something like 500,000 visitors a year, looking at the \$3 average and looking at your total income of, I think, \$1.6 million. You are getting 500,000 people, which is 1,700 people a day. That is on a six-day week.

Is it realistic to think that you can funnel more than that number through the museum in a day? This gets into marketing. The next thing I am going to throw at you is whether are you doing the right kind of marketing. Could you it better? Am I right? I am saying you are getting something like 1,700 visitors a day. That is quite a few.

Mr Kierans: That is paying visitors, yes. That is right because the \$1.3 million comes from the people who subsidize and a variety of other things.

Mr South: Do you have downtimes when you do not get many visitors? Are there maybe times when we could get a lot more visitors through? Let's change the marketing thrust.

Mr Shoreman: Yes, there are. We are doing very well and we are continuing to grow with school groups, programs, creative arts and what not. The general through-the-door paid attendance last year was about 680,000 people. We have room for more. Over the last three or four months, in fact, we have had a downturn in attendance. Tourism in the city has dropped off drastically and in the summer months about 60 per cent of the Royal Ontario Museum's general admission visitors are tourists.

At this point in time, we are looking at our marketing programs so we will not be so reliant on tourists. Sure, we need tourists and we will continue to try to attract tourists, but we have to make an effort to get more Toronto, more Ontario, more local people to come to the museum. But we do have room for more general admissions and we are conscious of that.

1510

Dr Young: To answer a bit further, there are very definite patterns in museum attendance. If you want a nice, quiet visit to the Royal Ontario Museum, come on a Monday morning. You will find five other people in the institution. Do not come on a Sunday afternoon or a rainy day and do not come on a Sunday afternoon in January; you will find 7,000 people in the building. In fact, there are certain Sundays when I am delighted that the fire marshal does not drop by, because in certain areas of the museum we are probably over legal limits in terms of population density. There are swings and roundabouts like that throughout the week, month and year.

This is common in the museum business. Given our resources, we try to the best of our ability to do some marketing that attempts to even that out. We would love to have an absolutely even 2,500 people a day all through the year. We are closed only two days a year, by the way, Christmas and New Year's, so you should do all your calculations on the museum on the basis of a seven-day week.

The Chairman: What is your population density?

Dr Young: I am not sure. It would vary from space to space. It would have to be worked out in terms of wings and galleries rather than the building overall. I am sure we have never reached our population density in the building overall, but in certain areas we certainly have.

There are marketing things we can do. Mr Shoreman was just pointing out where this kind of sudden swing in the tourist business in Ontario is leading us. A tourist, by the way, in our definition is somebody who comes from more than 100 miles from city hall, so a tourist would be someone from London, Ontario.

Mr South: We had a problem defining a tourist for Sunday shopping. Thanks for the definition.

Dr Young: A tourist for us would be someone from London or Kingston.

The Chairman: Or Frontenac county.

Dr Young: Yes. One of the difficulties we face, of course, in becoming perforce more and more dependent on self-help—just as a term to cover all these things, other than the government grant—is that we are put at the mercy of those kinds of economic swings, which are situations over which we have absolutely no control. That is a very frightening thing when you are dealing with an institution that if it is going to work at all has to have some permanency. Try as we will to run things in a businesslike way, we do not have the flexibility of a business. The people of Ontario want us to be here 100 years from now. We cannot simply cut out of this business and go into another business in the face of economic swings and economic pressures, so we have to find the balance that gives us stability and at the same time allows us to respond intelligently to market forces through changes in marketing programs.

Tourism is way down this summer in Ontario and we are way off in attendance. When we discovered this was really a trend, it was too late to do anything about the marketing budgets for August because they were already committed, but as Mr Shoreman said, for September we are beginning to push a bit harder on marketing within Metropolitan Toronto. If tourists are not coming, let's see if we can at least get people out of their houses and downtown. To a certain extent, we can respond to that kind of thing.

Mr South: Some of your remarks are taking us in two directions. For example, 60 per cent of the people coming in are tourists. That is good and bad. I sometimes think academically oriented groups and people—that is where I regard a museum—make a mistake by trying to get into the business world and becoming marketers. I think you might be better to turn over that tourist component of your business to an entrepreneur, put it out on a contract basis and say: "We will allow you a percentage of our viewing time or viewing space. You get the people in here and charge what you will. This is what we are going to charge you," or something like that. Give them a lot of latitude.

I appreciate you have to do things such as security. I guess maybe what I am saying to you and to your group is the observation Mike made: Not too many of them got dirt under their fingernails. Also, I will bet you that not many of you and your trustees are marketers. I wonder if you should not be turning that over to some entrepreneurs and giving them a little more free rein. I am great for pushing for more self-reliance in all groups who come after public funding.

The other thing is in regard to the native population of Ontario and Toronto coming to your museum. In terms of your baseball exhibit, are you advertising it at the SkyDome? That is where baseball people go. What kind of media are you using? Is it the academic papers, etc? Are you trying to tell people who are part of the academic world that you are running a baseball exhibit at the museum? They say, "Get lost; that is not my interest." Are you down where the action is in baseball, in the SkyDome and places like that? Is that where you are advertising the fact that you have a great baseball exhibit up here?

Dr Young: There are about five or six questions there. I will try to tackle a couple of them.

First of all, the marketing and public relations people at the Royal Ontario Museum are not academics. They are professional marketing and public relations people. The academics are the curators. There are 76 of them in the total staff of 650. So though it is an academic institution, it does not staff functions like marketing and public relations with academics. It so happens that the head of the whole operation has a PhD, but it happens to be a PhD in marketing. She is not a professional academic in that sense.

Four and a half years ago, just before I become director, we were in a situation where for some three years we had been contracting out all the marketing and all the public relations of the museum. We have discovered in the last four years that we can do an infinitely better job ourselves for a lot less money.

As to your final question, given the fact that the baseball exhibition is sponsored by Labatt's and the Blue Jays, you can be assured that it is getting coverage down at the dome. We have made a very specific effort to reach the baseball crowd.

When I was talking about that question of perception lag, you reach the baseball crowd, you get the information to them, but what you have to break through is this fog of association. My thing just does not associate with those guys. For instance, my son-in-law who is a baseball freak was sitting out on the deck and he said to me, "How long is the baseball show down at the museum open?" I said, "It's going to close around Labour Day." He said: "Do you think I really ought to go see it? Does it have anything to do with baseball? What is it?" It immediately became clear to me that we had a perception problem here.

We have succeeded very well, I think, in getting the message in front of the person. Now if you can get the person to read the message, absorb it and take it into his own world view, his own perception of what a stadium is and what a museum is, there is the real trick.

Mr South: When you advertise the place, you say it is taking place at the museum. Is there an address on the museum?

Dr Young: Yes; 100 Queen's Park.

Mr South: Why do you not advertise that baseball is taking place at 100 Queen's Park?

Dr Young: We do.

Mr South: But do you say it is at the museum? That is maybe what is killing you.

Dr Young: The Royal Ontario Museum, 100 Queen's Park.

Mr South: Pardon?

Dr Young: All of our advertisement has the address on it.

Mr South: Yes, but maybe you should remove the word "museum." This is maybe what kills them and scares them off.

Mr Kierans: Any one is possible.

Just let me say, going back to Mr Breaugh's comment, we may not have a lot of people with dirt under their fingernails, but we have a lot of business people on that board of trustees.

Mr South: You got his attention, Mike.

Mr Kierans: A lot of business people.

Mrs Marland: I just told Michael he forgot about all the people who do digs.

1520

Mr South: You get 1.5 per cent from corporate sponsors. I would think you could fund just about any dig you wanted to do, any new special exhibit you wanted to make, with the breweries, the distilleries, the people who are making it big in the corporate world today. I guess I am going at what Mike was saying. I would think capital is not hard to come by.

Mr Kierans: You mean operating income. You mean funding exhibits as opposed to capital.

Mr South: Yes.

Mr Kierans: That is an operating issue. No, I do not think so. I think it goes the other way, to be honest with you.

First of all, I accept the challenge. It is part of what I have to do, which is to get more of this stuff. Eddie Goodman certainly did a lot before me, but I have been chairman for four years of the area-wide component of the United Way and the demand on the corporate dollars for those corporations that actually give is unbelievable. Even those corporations that give more than one per cent pretax a year are being hammered across the board by United Way, by the University of Toronto, by the various health services, by Sally Ann; it goes on and on.

It is the large corporations that actually give, and the statistics about which I speak I know something of. Once you get through the large ones, nobody gives anything, and they are not the ones who are going to fund a baseball exhibit or a dig in Mexico or any of that kind of thing.

Our constituency for raising the kind of money you are talking about is both underpopulated and overdemanding and it is quite tough. I am not shrinking from the challenge; I am just dealing with the real numbers.

Miss Roberts: I will be as brief as I can. I am looking at the funds as well, at the funding and maybe some of the policies you gentlemen have been

speaking about in your various meetings. What I would like to know is, have you set out a policy whereby you feel the level of funding for the province should be 80 per cent, for municipal government should be X percentage, and for the federal government should be X per cent? Do you have a target you are moving towards?

You spoke in, I thought, a very positive fashion, saying that the level of funding from the provincial government has gone from 85 per cent to 82 per cent. You have picked that up in your own works. Is there a target you are aiming for or are you just saying, "We'll play it as it goes"?

Mr Kierans: No, it is not a business plan, to answer your question correctly, which is to say that there is no appropriate level.

Let me go back and be fair to Metro. Metro gave us, for a particular funding purpose five or six years ago, a very substantial amount of money consistent upon us not reapproaching it on an operating funding basis for some specific period of time. To be fair to Metro, it has given in the past. To be fair to us, it behooves us to point out that 60 per cent of our visitors come from outside Metro, and therefore it is tourism and therefore it is Metro and therefore let's get on with it. So we have infill there.

With the federal government, of course all we ever hear about day after day is \$30-billion deficit, \$30-billion deficit. They have given \$1 billion to the establishment of a new museum in Ottawa, which however spectacular its physical surroundings might be, has collections that do not come within a patch of ours.

It behooves us to get after the federal government to spread it a little bit. ROM is of course funded by the Ontario government first and foremost and the Ontario government is by definition the senior partner, but ROM is a national institution. From a worldwide basis, people who are in the business of museums think of the ROM first and this is clearly a federal factor.

Then away from that, we have to get into corporate sponsorship for specific temporary exhibits on a very systematic basis.

But it is a foot race. The Ontario government's revenues have been increasing at a very generous pace; in other words, its tax take, the consolidated revenue fund has been doing very well with the growth of the economy over the last five years. The Ontario government has not been ungenerous with us, but those who think that seven-year expansions continue for ever are living on another planet. The Ontario government is going to have problems and therefore we are going to have problems. It is a foot race to the door as to how we anticipate and beat those problems through the door, and I do not think business plans any better than that.

Miss Roberts: So you really are looking at alternative ways of funding.

Mr Kierans: That is right.

Miss Roberts: Our information is that you have admission fees; you have some investment income, and that has gone up fairly significantly as well; you have museum programs, and that has increased significantly I noted, as well as museum services having gone up almost one per cent. You really have been doing your job there.

What I would like to ask you about, and maybe it is the same question but on a different level; the business plan or something. How do you decide how much money you are going to put in research? I hate to agree with Mr Breaugh on anything, but I also agree that you have to market your museum and you have to have those special projects, and it has to be a living museum.

How do you decide? Is there a special plan that says, "We're going to spend 20 per cent on research," or does that come and go depending on what finds there are? How much are going to spend on outreach—that is something I will come back to—and how much are you going to spend on education and that sort of thing? Do you have a plan for that?

Mr Kierans: The director is most qualified to speak to that.

Dr Young: Yes and no. There is now the five-year strategic plan which sets out the basic, broad commitments of the museum to proportions of activities. But it does not put dollar numbers on those apportionments, and those dollar numbers are argued out every year. It was my policy when I became director of the museum—previously, budgets had been written pretty much in camera by four members of senior management. I have opened that up. We have a budget committee on which department heads serve. We are four years into the cycle now; in another two years, we will have gone through a cycle where every single one of the 40 department heads in the Royal Ontario Museum will have served on the director's budget committee.

Basically, that committee makes the actual appropriation decisions. Over the past four years since I became director, those appropriations in terms of the broad activities of the museum have not changed more than a percentage point up and down, year by year. We are, in other words, spending exactly the same proportion of money on research today that we were paying four years ago and we are paying exactly the same proportion of money on public relations and marketing. The one exception is that the whole development office function has grown. But it is a fairly small office within the museum, so it has drained a quarter of a percentage point away from other activities.

When you come to confront the question of the distribution of funds in any one year, and let's say you are dealing with a very tight year as we were this year, one of the important things—this brings me back to that point I made earlier: the people of Ontario want that institution to be here 50 years from now and they want it to be doing better and doing more of but still basically doing the same kinds of things and making the same sorts of contributions to the community it has always made.

When you come to look at tight budget situations in an institution like that, you have to look very carefully at: What are the most fragile elements in our operation? By that I mean: What is there that, if I dismantled it for economic reasons, would be the hardest thing to rebuild, as opposed to those things I can tone down on this year but without any difficulty at all I can tone up next year, if next year is a little better?

There are certain kinds of programs in the museum, primarily the long-range research projects. For instance, I started a research project for the Royal Ontario Museum in 1965 which will not be completed and published until after I have left the directorship.

That is one of those fragile things. You cannot just kick that in the shins and knock it out without essentially saying, "All that money I spent for the last 15 years is going down the tube." To build that kind of project back

up is going to take another 15 years. When it comes to push and shove, those types of things, if the institution is going to have continuity and is going to have solidity, have to be protected.

1530

We can spend three per cent less this year on publications, let's say. So we publish two fewer things this year. Well then, with with a bit of luck, next year we will be able to publish two more things than we would have. That you can crank up and crank down relatively easily.

That is one of the reasons it would be very difficult to sit down and put on to the strategic plan these large areas of commitment in principle, to actually put today dollar-and-cent figures on them that you could say, "I am actually going to be able to defend three years from now" or "five years from now." You could do the exercise, but I think it would be misleading and close to guesswork.

Miss Roberts: On this committee, I would say there are a number of us who would be considered tourists by your definition. One thing I would like to praise your museum for is that every time you have done an outreach, you have raised the level of attention and understanding in my area a good percentage point, each time.

But my concern is that they are not done enough, especially your outreach to schools. You have fantastic kits you send out, and I know those schools that use them are very pleased with them, but there is not enough. There is not enough done with the teachers either, who should use the facility more. There just is not enough done in that area, because it seems that people, if they know about the museum, when they come to Toronto will go to it. But if they do not have a positive experience of it or an understanding, then they will go elsewhere. Anything I could do to encourage you to put funds in that area, because your tourism, if that is the definition you are going to keep using, is very important.

The other thing—I am not sure from the answer you gave previously today—is that there are many smaller museums throughout all of Ontario. I do not know what connections you have with them. I know you do loan them exhibits from time to time, but I also am concerned about whether you spend time helping them cultivate their own profile in the community and, as a result, helping to cultivate the profile in the community of the ROM.

Those are two points I would like to put across today and maybe have your comments on as to where you stand, in particular with respect to the other museums that are scattered throughout Ontario, because you have a resource there that is very helpful to them all.

Dr Young: We have a considerable amount of interaction with those other museums; not nearly enough, but in my judgement as much as we can do, given the resources, particularly the human resources, we have. That kind of advice giving, interaction and so forth is very labour intensive, and we simply do not have the personnel to do a lot.

We interact with the Ontario museum community as a whole through our joint institutional and individual professional memberships in the Ontario Museum Association. ROM and ROM people have always played a very prominent role, I would say at times even a leadership role, in the Ontario Museum Association, and we have a certain amount of interaction. I mean, since I have

been director, I have gone out and cut ribbons at openings of exhibitions in half a dozen different Ontario museums. They are constantly coming to us for advice, primarily on the question of exhibitions and conservation.

It is just a fact that our own exhibitions department is absolutely, flat-out, 110 per cent right within the four walls of the museum; that is also true of our conservation department. I could make a case for you that we are two or three years behind in some very serious conservation needs in the ROM.

That kind of interaction, as I say, is labour intensive, and we are labour-pinchd in order to meet our general mandates.

I am very proud—as are you, if I understood your comments correctly—of the outreach program. I am not entirely pleased with it, again in terms of its size. I think it does an amazing job in terms of the number of different communities that it reaches and the number of different types of resources it makes available to those communities.

But just to give you an example of a funding problem there, in 1975-76 when we did not have an outreach program—we had an advice to small Ontario museums program and we had a Museumobile, but we did not have an organized outreach program—the government of Ontario came to us and said, "Look, we'll make you a special grant of \$172,000 to start an outreach program and get it going and we'll continue to give you money to support that outreach program," and they have kept it consistently as a separate allocation to the Royal Ontario Museum. Well, here we are X number of years later: Our outreach program costs us \$800,000 a year and the special grant from the province is still \$172,000. We got suckered in a certain sense. I am delighted that we did—do not misunderstand me on that—but we are putting a lot of resources into outreach, a lot.

Mr Kierans: If I could just address the question of not enough, there is also a tremendous difference between the cost of a proactive program, in other words, going out and identifying everybody, as opposed to trying to get some of them and then responding reactively.

I personally just came back from the Woodland Indian Cultural Educational Centre with a good segment of the board in Brantford. That was a good example; we had been proactive, we had been helping, but we got there and they wanted something. It was easy for us and not expensive for us to react and say, "Yes, we understand." We had a board meeting right on the spot and we did it. But the moment you go from that kind of reactive mode into a proactive mode and find everybody who needs help, it is incredible. We could not do that for \$800,000 any more than fly to the moon. It would take \$8 million to do it properly.

Miss Roberts: Your outreach program, then, is that you wait for people to come?

Mr Kierans: No, we are proactive, but with the amount of money we can respond a lot better as opposed to finding all the opportunities. The thing is very proactive, it is just that to quantify it we would have to have a lot more money to be completely proactive in the sense that you are talking about, get every school that has every teacher who might be interested.

The Chairman: Can you tell me what your 1989-90 budget is? You have your 1988-89 budget, \$24 million. Do you know what your 1989-90 budget is?

Mr Shoreman: The 1989-90 operating budget is \$25,956,032.

The Chairman: What part of that is salaries and benefits?

Mr Shoreman: It is \$19,805,600.

The Chairman: Dr Young indicated there are 650 employees now. Is that correct?

Mr Shoreman: It is 623.

The Chairman: That is what we had, 623.

Dr Young: Full and part-time.

The Chairman: You had said it was 650.

Mr Kierans: It was I who said 650, not Dr Young, and I was just giving a round number.

The Chairman: Fine. The ROM does not pay property tax where it is, does it?

Mr Shoreman: No, we do not.

The Chairman: The order in council appoints the people on the board. What do they get paid?

Mr Shoreman: Nothing.

The Chairman: That is a little different than the one we reviewed the other day. I would not want to tell you what they got.

Mr Kierans: Not only do members of the board of trustees get paid nothing, in fact it costs most of them to belong in terms of travelling. Theoretically, they are entitled to their travel expenses. If a trustee lives in Ottawa and comes to Toronto, for the sake of example, for a board meeting, that trustee will be compensated for that element of travel, but for the bulk of trustees it costs them money to belong and they get paid nothing.

1540

The Chairman: Are they order-in-council appointments?

Mr Kierans: Yes, they are.

Mr Shoreman: Even at that, I must say that a lot of those board members give the travel expense money back to the ROM, for the most part.

Mr Kierans: That is the point I was trying to make.

The Chairman: I think it is good for the public to know that there are boards here that do not get paid.

Mr Kierans: They are also substantial contributors, as givers to the museum funding campaigns. As a matter of fact, every one of them is. That tends to get you back to the dirt-under-the-fingernails routine. On the other hand, it is not a condition—

Mrs Marland: They are never going to forget your comment, Mr Breaugh.

Mr South: You made a classical statement.

Mr Kierans: But on the other hand, it is not a condition of their being appointed to the board that they be givers either. The only point I really want to make is that they are not receivers; that is for sure.

The Chairman: That is very interesting to know. What salary range would the director be in? The category of a deputy minister?

Dr Young: Lower range of a deputy minister.

The Chairman: Around the \$70,000 to \$80,000 range?

Dr Young: No, more than that.

Mr Miller: I listened carefully. First of all, as to the matter of dirt underneath the fingernails, that bothers me a little bit. I smoke a pipe and I could be kind of accused of that. I do not know whether I could be on the board or not.

Mr Breaugh: You cannot be accused of doing an honest day's work; that is one thing.

Mr Miller: I just want to make a comment about Dr Jim Cruise, who happens to come from my area. He lives in Port Dover. He retired I think in 1985. He has gone back to the farm, maybe to get a little dirt under his fingernails, and he has been a tremendous addition to that part of Ontario, because he is still very interested and contributes to the community there with his expertise. We have an excellent museum in Simcoe, and young Bill Yeager I know uses some of the services through the ROM.

Marietta asked a question about how you service and how closely you work together with the museums around Ontario. Could that be strengthened maybe by using some of the expertise on the central ROM to be beneficial to both rural Ontario and the museum itself? Could the theme be a little more around Ontario's history? I know it is ancient history. We took our grandchildren there last summer and the theme then was the Egyptians. Dinosaurs was another theme. Do you change it? Is it changed so that there is something different if the kids come every year?

Dr Young: In terms of the special and temporary exhibition program, yes, it is changing all the time and there is something else emphasized with each exhibition.

We try to do two major special exhibitions a year. A special exhibition is defined as one that goes into special exhibition hall. That is a big exhibition; the hall is 7,500 to 8,000 square feet. We can do two of those a year.

Then we do temporary exhibitions in different places, different gallery spaces within the museum. The total temporary and special exhibition program last year put on 15 different exhibits. That is changing. There will be another 13 this year and maybe 17 the next year and so forth. That is changing constantly in response to a variety of factors.

The permanent galleries are another issue. In terms of Canadian and

Ontario history, of course, again I draw to your attention that all you have to do is walk across Queen's Park Crescent West here to number 14 and you are into our Canadian decorative arts galleries and you are into Canadian and Ontario history. We also have a Canadiana gallery that includes Ontario, among other things, up in the main building with about 4,000 square feet of display space altogether. Those are permanent galleries and will always be there.

The temporary exhibition program is much more fluid and changing. You have to come back to the ROM three times a year in order to keep up with what is going on.

The Chairman: Mr Kierans, is there anything that you feel we could do with regard to the government amending the act or some input we could have that would help your board operate more functionally? If there is and you do not want to talk about it now, we would be pleased to have it in writing or to have some indication about how we could help in some way.

Mr Kierans: I thank you for that, Mr Chairman. As a brand-new incoming chairman, the way I see the situation is that the initiative lies with us, the members of the board of trustees. Sure, we can always say that we would like to have more, we would like to have this, we would like to have that, but the fact of the matter is that the province is the senior partner and the principal supporter of the museum.

It is up to us to figure out the new ways to respond so that we are not always going back to the government and asking for more and more and more. That is not to say we are not going to go back and ask for more and more, but to the extent that our feet are kept to the fire, that is as it may be and perhaps as it well should be. But I thank you for the thought anyway.

The Chairman: The wages over the last short period of time have increased, it indicates, by 60 per cent and with the Ontario Public Service Employees Union involved. Does your staff now have a pension plan in place?

Mr Kierans: Oh, yes.

Dr Young: And one that conforms to the pension act of Ontario, I might add.

The Chairman: That is good to hear, because that is why I asked the question.

I want to thank you for appearing before us today and I congratulate the board, Mr Kierans, on your volunteer work. It is certainly nice to see people in the community who are really looking forward to putting back in a little bit instead of always taking out. I was amazed that your group is not one of the ones that does get salaries or per diems. I would be curious to know how many others there are in that same situation.

Miss Roberts: Most museum boards.

The Chairman: And libraries too, I presume. Thank you once again.

ORGANIZATION

Mrs Marland: We were asked to read the Stadium Corp of Ontario report over lunch and I just wondered if, before Mr Magwood comes in tomorrow morning, I could request some more information on these figures. I am not

quite sure from what I have read how much a box costs. There is a figure here for 16 boxes for \$26 million. I would like to know how much a box costs, what privileges box owners have and what obligations they have.

The Chairman: You could ask that question tomorrow, right directly to him.

Mrs Marland: Ask him instead of asking Andrew? Okay.

Mr Breaugh: I think he wants advance notice of your questions and you have to put them in writing.

The Chairman: I am not sure yet, but we may be fortunate enough to get the first week of October for sitting. As you are aware, our budget has been approved, but there is nothing definite yet on our first week. It may be.

Assuming it is, we have got to set an agenda and we have to look at whether we are going to advertise, whether we are going to hold public hearings for the whole week, whether we are going to deal with the two reports the first and second day and then have public hearings for the next three days, and if we are going to do that, then we have to advertise. Our clerk would like to have an idea. If that is the case, then we should be having him prepare the ad for us to approve so that it can be done.

Mr Breaugh: Could I suggest that the clerk proceed with the preparation of the ad? I am reluctant to say that you proceed with placing it until we have the confirmation of the hearing dates, but it was my understanding that at least the bulk of the time during that week, should we get it, will be devoted to a form of public hearings. I think it is incumbent on the House leaders and many others, I suppose, to make up their minds on this. Certainly we have gone through the administrative part of preparing a budget. It would be my wish that the clerk be directed to simply prepare both the context of the advertisement itself and the distribution of the ads so that we are ready, as soon as we know that we have the sitting time, to proceed with that.

The Chairman: Mrs Marland, do you agree with that?

Mrs Marland: I do not think that it was ever the intention of the three House leaders that the matter of the open and public review of the Ontario Human Rights Commission could be accomplished in one week. I recognize that this committee requested one week before the House resumes, but I think it is very important that we do not try to do everything in that week or we will fail miserably doing any part of it properly. We have to decide a number of things that we discussed a month ago when I at least was trying to get the hearings or some part of them started in August.

We have to first know what it is we are looking at. In order to do that, I think we did have pretty well a consensus agreement that we should look at the internal interministerial review. We gave the name of the authors, Gordon and Amin. I do not have the material with me today because I did not know we were going to discuss this today, but in any case we know that we wanted to look at the internal report. It was suggested that we might want to look at the Clarkson Gordon report. Is that the name of the firm?

The Chairman: Yes, I really wanted to find out today is whether we should have a discussion with regard to what we should do if we get the week. If we should advertise, then I suggest we be prepared and tomorrow perhaps we could deal with it if we get the letter by tomorrow.

Mrs Marland: I think it is very important. Obviously, the intent is to have a full, public and open hearing. Obviously, the first people we have to hear from are the people who have been identified in the report and the authors of the report. Then I think it is important to invite those people in the community, not individual cases, not individual appellants with the Ontario Human Rights Code, but those people who work with the process. We should get their comments; otherwise, we are not meeting the mandate of the government House leader's referral of that matter to this committee.

The Chairman: Okay, that is fine.

Miss Roberts: We have to decide, though, if we are going to speak with the writers of the report first. I always thought perhaps we should, but it would appear that that is going to be a week where public hearings will be easier to do than our trying to do them through October, November and the first part of December.

I would be one who would urge that if we do get that week, it be the public hearing week. We can bring in the authors of the report after that, just for facility, more than anything else. That is one thing; if we do get that week—it is a little backwards. I agree with you, Margaret, on that—but I am convinced that it will be much simpler and much easier for us to have the public in.

Mrs Marland: Because we have all day.

Miss Roberts: That is right, instead of having two hours in a morning.

The Chairman: That was the reason I brought it up, because if we are going to advertise, we have to do it immediately. I wanted to get the feeling of the committee because I do have a feeling we are going to get the week.

Mrs Marland: If we get the approval of the House leaders for that first week in October—

The Chairman: It is the whips who make that decision.

Mrs Marland: Whoever—could we have an agreement with the committee that we sit at least four days that week?

Miss Roberts: I am prepared to sit five.

Mrs Marland: I would be prepared to sit five, but I thought if I said five, I would get hammered.

Mr Breaugh: Only during the daytime?

Mrs Marland: I would be willing to sit from nine in the morning until nine at night.

The Chairman: I think we have had a good discussion. Tomorrow we will find out whether the letter is forthcoming or not and at that time we will have a motion. We will have to have a motion in order to advertise.

This committee stands adjourned until tomorrow morning at 10 o'clock.

The committee adjourned at 1554.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

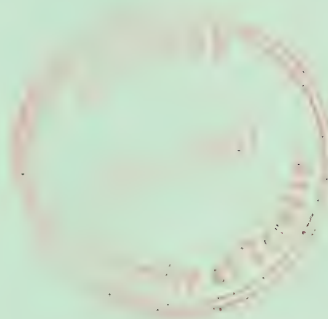
ORGANIZATION

AGENCY REVIEW:

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WEDNESDAY 30 AUGUST 1989

Morning Sitting



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Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Lipsett, Ron (Grey L) for Mr Ballinger

Lupusella, Tony (Dovercourt L) for Mr J. B. Nixon

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

Witness:

From the Stadium Corp of Ontario Ltd:

Magwood, Charles J., President and Chief Executive Officer

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 30 August 1989

The committee met at 1015 in room 151.

ORGANIZATION

The Chairman: If we could have your attention, I would like to call the meeting to order.

There are a couple of little housekeeping duties that I would like to bring to your attention, and maybe we could determine what we are going to do this afternoon and tomorrow. In the past, we have kind of let go for a while of some of these things and it is a little difficult to realize what you have done. I would like to try to tidy them up this afternoon and tomorrow, so that we have a report or at least something that looks like a report that we could kind of agree on.

I have a letter that was sent to me yesterday and I am getting copies made for all of the members. I should have given it to the clerk to make copies, but my staff is doing it and when it is done, it will be up here. It is from the provincial co-ordinator of the psychiatric patient advocate office who was at our meeting and who did not get a chance to say anything. Of course, we did not realize that she wanted to and we thought that she was with the group that was there.

I am wondering if the committee would like to hear from her. She is a provincial appointee for the advocates. I am wondering if the committee would like to hear her this afternoon, if we had an hour. She sent a letter requesting that she be heard, and I do not think there is any way around it. We have not completed our review, so I have a feeling that we really should hear her, but I want the consent of the committee to do that.

Miss Roberts: Is she going to represent all the advocates in all the various hospitals, because there are five or six of them? So it will not be her own presentation; it will be a presentation on behalf of those people who advocate in the psychiatric facilities.

The Chairman: I would anticipate that would be the approach she would be taking.

Miss Roberts: It would be fine, I would hope, if that is what it is going to be. I think she could come this afternoon.

Mr Breaugh: Yes. I would suggest that you offer a little flexibility since there is short notice involved, but I would think that either this afternoon or tomorrow some time we could find an hour or so where we could allocate some time for her.

The Chairman: If that is the consensus of the committee, we will do that.

Mrs Marland: Mr Chairman, I have not spoken, but I would like to hear from her. I would prefer that it were tomorrow morning if there was some flexibility.

The Chairman: We will try for both and see which is agreeable. We have the one we dealt with yesterday, the Royal Ontario Museum and the Stadium Corp of Ontario Ltd today. I hope that tomorrow we can try to come up with some finalization on those agencies.

We have with us this morning Chuck Magwood, president of the Stadium Corp. Come up to the table, Mr Magwood. You have some people with you, I presume, or some colleagues, your vice-president of finance and your treasurer. Perhaps you could introduce them. Do you have a presentation that you would like to make to us? We are in your hands.

AGENCY REVIEW: STADIUM CORP OF ONTARIO LTD

Mr Magwood: I do not have a formal presentation. Perhaps I could have an opportunity for an introduction, if you like, from our perspective.

I am here with the two biggest people in our operation: John Kravis, our treasurer, and Jamie MacArthur, vice-president of finance. Martin Connell could not be here today; he is out of town. I will do my best to stand in his stead and answer all questions that relate to the corporation. Hopefully, I am familiar with all aspects and can answer the questions you may have.

Of the many risks that the Stadium Corp has had to face in the last while, and some of those personally, there is none that gives me greater concern than the lampshade that is on a precarious angle right over my head up here. What I want to know is, who has the string on that thing?

Interjections.

Mr Magwood: It is my understanding that your committee is here to review crown corporations, crown agencies, and the Stadium Corp is that. We are set up as a schedule 2 corporation and, in accordance with the memorandum of understanding that was executed in 1986 by the Treasurer (Mr R. F. Nixon) and Martin Connell, the instructions basically have been given to us and set out the parameters within which we operate.

We have two corporations in existence. One that we call corporation 1 was incorporated back on 1 August 1984 as the Ontario Sports Stadium. It changed its name to the Stadium Corp of Ontario. We refer to that today as Stadco or corporation 1. That change of name happened late in August 1984.

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There was a second corporation that was set up, which is a numbered company that subsequently became known as the Stadium Corp and it is now a dormant company. Stadco is owned 100 per cent by the province. The shares are held by the Treasurer of the province. In the case of corporation 2, the shares are held in trust by a law firm for corporation 1. These two corporations are involved one with the other.

The active entity that has built the stadium is Stadium Corp of Ontario. It has 12 directors, I believe. They have been appointed by the province. The intent is that at the end of a phase, which we are now coming into right now after the project has been built and all contracts let, then a partnership will be formed. As of this point in time, there is a second corporation that is called Dome Consortium Inc—DCI. DCI is owned by a series of major Canadian corporations. There are now 25 corporations with two more added recently to take it to 27. Those 27 corporations are the investors who, for \$5 million each, own Dome Consortium Inc on a pro rata basis.

The intent is that the corporation, together with the Stadium Corp, will roll its interests into a partnership to be formed which will be the ongoing operating vehicle for the stadium. That partnership will be formed likely in the next few months. All along, the structure was such that it would be at some point after the stadium actually opened before the partnership was formed. Through the piece we have had the benefit of the use of the moneys and contributions of those various corporations in the form of loans.

After the partnership is formed, the structure is such that the control of the partnership stays with the crown, so that whether it is in the form of voting within the board of directors or voting within the shareholding and ownership partner groups, there is always a preponderance in favour of corporation 1, which is the provincial crown corporation. Decisions are made by a majority of that group—the partnership—and that majority will always be, by representation, the province.

In terms of some background on the funding of the project, I do not know to what extent you are interested in that but simply, the project was set up early with a grant from the province of Ontario of some \$30 million. That was added to in the form of a loan of, I believe, about \$5.7 million which will be repaid once there is a positive cash flow from the project. With those moneys in place, the corporation was set. In addition to that, some \$30 million was advanced to the province and then turned back to the project by Metropolitan Toronto.

It was a five-year arrangement and the advances have been made in equal amounts approximately over a five-year period and virtually all the moneys have now been received from Metro. There is some \$2.3 million of the \$30 million that remains to be advanced in accordance with the schedule. The balance of dollars of equity have come from the consortium members themselves. At this point, there is \$150 million, which has been received from the 27 consortium members plus three breweries. Also, we have had a program of preselling club seats and boxes which has funded an additional amount of something like \$60 million. Then the difference between that equity received and the actual cost of the project has been covered by financing through the Canadian Imperial Bank of Commerce.

The Stadium Corp has entered into the contracts with the construction people, the consultants, the legal firms and all the others who have been involved in advising us. In addition, the Stadium Corp has entered into a series of leases with the various tenants. For example, the Toronto Blue Jays are a tenant of the Stadium Corp, as are the Toronto Argonauts and the various tenants that operate physical premises within the facility: the restaurants, bars, a health club, retail space, office space, etc. Structurally, that is basically the way it has gone.

In addition, we have an audit committee that has been set up, we have a finance committee and we have a marketing committee. All those committees are established and approved by the board of directors and they have held a series of meetings as we have gone through the piece.

Finally, our prime contact on a direct basis has been through representatives from the Ministry of Treasury and Economics. They have attended virtually all of the joint finance committee meetings, both from the Dome Consortium Inc and the Stadium Corp. They have also attended most of the board meetings and are privy to the status reports and five-year capital plans, operating plans. They have been reviewed and have been in close contact with our own staff in understanding, on virtually a day-to-day basis, how this project is going.

As a schedule 2 corporation, however, it is my understanding that that was set up really to create a commercial operation, which is what this facility is, so that by virtue of that status we have not had to live with the basic day-to-day reporting and the very close scrutiny that most crown corporations would have to follow through if they were not schedule 2 corporations.

The Chairman: Is the SkyDome fully functional now?

Mr Magwood: With respect to the portion that the public sees, that they enjoy in coming to baseball games and other events, the answer is yes, with the exception of deficiencies. In a project of this magnitude, there are construction deficiencies that have to be rectified. There are a number of those things, but in addition to that, there is a significant part of the complex that is not yet open.

In general dollars, of the \$532 million, which is the published figure of the cost of the full complex, at this point there is about \$100 million of that complex that is yet to open. That includes the hotel, certain restaurants and certain other commercial spaces. All of them should be open by the end of this year.

The Chairman: The reason for my question was the fact that the interest payments on the \$5.7 million that was loaned by the province start after it is fully operational. I was wondering if that has come to the stage where you are paying interest yet.

Mr Magwood: The first payments, as Jamie has explained to me, commence on 1 January 1990.

The Chairman: The other question I have is with regard to the hotel, restaurant and health club. There are a lot of clauses in the approvals the consortium has. Did you have the approval of the minister before the decision was made to proceed with the hotel, restaurant and health club?

Mr Magwood: Those elements are all part of the capital plan that has been approved, from time to time, by our board of directors and has been reviewed and signed back by the Treasurer. For example, in the signbacks of the budgets from the Treasurer from time to time—these would probably be starting in early 1987—there are probably five or six different written confirmations from him that the capital plan was acceptable. Within that capital plan, those elements of hotel, the health club, etc, were incorporated.

The Chairman: The information I have is that the provincial government will retain control of the management of the stadium. In your opening remarks, did you indicate that there would be a consortium set up that would be in control or is the province going to remain in control of the management of the stadium?

Mr Magwood: The province, up to this point, has been completely in control of management in the sense that we work for the corporation that is the crown corporation. As I mentioned, a partnership will be formed in the next few months. In the makeup of that partnership, there is a management board, control of which will always fall with the province, as well as the voting control within the partnership.

The Chairman: What size would you see that partnership or management board being?

Mr Magwood: I believe the understanding is that the province will always have two more members than the consortium on representation. Each consortium member has a representative. We are looking at something in the order of 58 or 59 members on that board of directors eventually.

In turn, there will be an executive committee which will really be a group that will be much more manageable and will be able to look at decisions on a more regular basis. That group will probably be about 12 in number, but once again, the preponderance of seven out of 12 in that example would be provincial appointees.

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The Chairman: Are you saying then, in the overall management, there will be about 30 provincial appointees on the board?

Mr Magwood: That is correct.

Mr Breaugh: I think all of us have been there and we think it is great stuff. We are very proud of the SkyDome, that it is here in Toronto and all of that and it is all of those things. Those of us who have had a chance to visit other facilities of a similar nature in other cities in North America know that this one is as good as it gets and, in many respects, is unique in the world.

The standing committee on public accounts is doing its level best, as I understand it, to figure out how much this thing actually did cost. There is a snowball's chance somebody will find that out but it is kind of unlikely. I want to set aside all of that, how much it cost, who built it, who contributed to it and all of that because I think the public accounts committee is in a better position to do that.

I do want to pursue something which does concern me a bit and to try to tie in some things that you have said to us this morning. You are a schedule 2 agency. In that classification, unlike many other operating agencies that we have looked at, there is a fair amount of latitude in how you do business from this point on.

The concern I have is whether it was a good idea for the people to assist in the construction of the SkyDome. The possibility remains that we could have put this thing in business, got it operational, which is the expensive and the hard part, and then turned it over, so to speak, or set up mechanisms which allow the private sector to come in and maximize the profit from the thing. There is nothing particularly evil about that but then we did not enter into an agreement that we would pay for the building and somebody else would get to operate it at a profit.

The concerns I want to focus on are the kind of control mechanisms that are there now from the province's point of view and what happens from this point on. I want to set aside all of the construction problems, how much it cost, who sits in the box seats and all of that. What I would like to pursue for a little while this morning is how the new partnership will function.

For example, I have a hard time believing that there is going to be a group of 58 or 59 people sitting around and deciding what happens down there. I think that is unlikely. I think it is more likely that there will be a smaller group of people who will actually make the decisions. I am concerned about their relationship with the various functions that might go on in there.

Do we have, for example, a fairly detailed list, at this stage, of who will actually be involved in this partnership and what their business interests might be in the SkyDome?

Mr Magwood: Yes. Who the consortium members are is certainly public and known and discussed with representatives from Treasury. Who the representatives of those specific companies are, currently represented on the consortium board of directors, that is reviewed as well. They will be the same people who will be represented on the eventual management board of the partnership.

What remains now is for the appointees to be set up from the province's end to make up a significant number of people to match that, plus two more. So there are 29 appointees that must now be designated. I think that side is probably better known than the provincial appointees at this point.

Mr Breaugh: Are there any restrictions, for example, on someone who might serve in a management capacity on, say, the executive of this partnership? Are there any restrictions on the kind of business they can do in the Dome?

Mr Magwood: Are you concerned about conflict of interest within the management group itself as distinct from the consortium group?

Mr Breaugh: Yes.

Mr Magwood: The clear view is that we are bound by exactly the same constraints as all crown corporations are in that regard, in that there is no one, certainly currently, with management that I am aware of who has any interest in anything that is being done, nor is there any intent that will change, nor should it.

Mr Breaugh: For example, is there anything that would prevent someone who is a big player from the breweries, who had purchased club seats, was active and had expressed a long-time interest in the Dome, a big Argonaut booster, a big Blue Jays fan, a great guy, from going down there and setting up a business with the Stadium Corp of Ontario?

Mr Magwood: One of the rights that the consortium members enjoy for the \$5-million investment is what we call preferred supplier rights. That is realized in different ways depending on the corporation, so many or most of those 27 corporations have a contract for something with SkyDome. Each and every one of those must fit within a shoe, which is a guideline, which is a fair market value test, and that itself is determined in various ways depending on the nature of what it is that is being done.

For example, a major player is McDonald's. McDonald's is a \$5-million investor. For its investment, McDonald's enjoyed as its preferred supplier right the exclusive right at market for basically quick service convenience food service, which is interpreted as all the food concessions that are in there.

So yes, there is a player with whom we are doing business that is a representative on the consortium and will be a representative on the partnership management board that is doing business pursuant to a contract with the project.

Mr Breaugh: I guess what I am looking for this morning is that I would like to see your shoe selector guide here. I would like to know what the rules—are these rules all written down, for starters?

Mr Magwood: Yes. They are written down in a document that is a stadium agreement and it has appended to it a series of contracts that each one of these players will have executed; for example, McDonald's. That head document sets out the standards of determining the shoe, if you like, within which every one of those contracts must fit. Fair market value is the overall heading and within that it is equivalent product for equivalent price and equivalent value. We will retain, if necessary, a third party to advise us whether that test has been met, and in most cases, where at all possible, it is put to a competitive test in the marketplace.

Mr Breaugh: Is it reasonable for us to ask to see that agreement?

Mr Magwood: Absolutely. I have no problem with pulling together the section—these documents are fairly heavy—that deals with the market test.

Mr Breaugh: I think one of the things we have to kind of gear up for here is that it is not clear to the public yet, and it is not clear to the members of the assembly here yet, what the nature of the group is that actually runs the SkyDome. I would like as much documentation as you would care to provide about the partnership and the agreement that will come from that.

It perhaps is a little premature to look in much detail at how the SkyDome will actually function, but I am trying to flash the little warning signal here that there is a line in here on somebody who showed an interest, was an active participant, contributed financially and then enjoys the advantage of having done all of those things. I would like to make sure that the rules of operation are pretty clearly understood.

To choose a simple example, not everybody is going to be overjoyed with the price of your hot dogs, so there has to be a fairly clear explanation how one company got itself positioned in the mix of things to have the exclusive right to do that and that the reason your hot dog costs a little bit more there than it does on the SkyWalk on the way in is thus. We will have to provide that kind of reasoned explanation in some sense.

The other thing I would like you to address in a little bit more detail is that you have referred to Treasury staff as being not quite monitors but certainly constant observers of the process. Because you are a schedule 2 agency, my version of that allows you a fair amount of latitude in operation. Although there may be provincial appointees in fairly substantive numbers, they may not be in the critical position.

Do you feel you are an independent agency? Maybe you could spend a little time describing your version of the relationship between the SkyDome and its various corporations, partners, consortiums, whatever, and the province.

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Mr Magwood: All right. The structure is one thing and the reality may be something slightly different. I think the structure is fairly straightforward and is pretty much the way I described it. The reality is that through the construction phase, it has been necessary to make a lot of

decisions and make them very quickly. Whenever it came, though, to a matter that was significant in the form of a contract or capital commitment, this was something that went back to our board of directors, which would consider that. We would meet on short notice. I believe we have had something like 25 board of directors' meetings in the last two and a half years, which is a lot for a corporation like this.

At those meetings, if there was something of a financial matter that required analysis, a finance committee would meet in advance and review the implications of that particular item and that decision, and that would form a recommendation that would be forwarded to our board. The provincial representatives from Treasury, Don McColl or Susan Guinn, virtually always would be at that standing committee on finance and economic affairs meeting that would consider those particular items, and in addition would always be in attendance at the board meetings, virtually for the last year and a half to two years, I believe.

If you like, the easiest way to deal with communication was just to have people there when problems came up. That was the reality of it. At those same meetings of the board, we would usually call what we would call joint meetings of the dome consortium and the stadium corporation, so that even though the only voting members on the issues would be the stadium corporation, the representatives from the consortium would be there to hear and have their own input. They would be privy to it and close to the information. In reality, we operated on a consensus basis by involving people at a lot of the sessions and by doing a lot of reporting.

I may be talking too much here, but the other element was that we, as a management style, worked with status reports that we would prepare and that basically were summarizing in bringing up to date the issues all the time, which would be faxed out to various people. Even though people could not attend a meeting, were away for whatever reason or could not have their representative go to a session where these things were being discussed, the information was always current and in front of everybody who had anything to say about most things. That was the style.

Mr Breaugh: I will not pursue this too much further but I think it is worth spending a little time on. A number of the agencies we have looked at that certainly do not operate a project on this scale but are similar agencies of the crown have given us pretty good arguments that every time they turn around somebody in Toronto has to okay it. Some of them are facing some pretty stupid restrictions on the part of the Treasury about how they function. Where we could, we have tried to point out that some of these restrictions do not make a whole lot of sense and that the government does not cover itself in glory by putting them on.

I am more than a little interested in how this agency will function. It does seem to me that you have about as much latitude as anybody could stand. I am not convinced that Treasury people were there in much more than an observing role. You have not given me much of an impression, for example, that they could do much more than observe and report. Is it you feeling that they had any more of a duty than that?

Mr Magwood: Yes, I think so. They were there always to make us aware of the implications of any decision on the province, on Treasury, and to provide their own input on the way things should be presented and additional information such that we were reporting to them in the way they would expect. I would say their role was not dissimilar to that of everyone else who was

representing his own interest in following this thing. The reality is that it was so complicated and moving so fast that to a large extent management, the people who on a day-to-day basis were running the corporation were really the ones who had to make those decisions until we came to something of policy or of major financial implication.

I think the input of those representatives was as important as everyone else's. In addition to that, those representatives discussed regularly by phone and communicated with John and Jamie in the financial area all of the time, quite apart from those meetings. The involvement was good and we have not suffered under some of the things you have suggested. I do not think this project has been hidebound at all by constraints of structure that could be imposed from above, if you like. It is kind of almost a miracle that all of this did not happen that way.

Mr Breaugh: I guess my concern now is that this is getting very complicated in a hurry. The structure of how things will occur in the SkyDome, the structure of how decisions will be made is now pretty complicated and it is getting more so. So in terms of the provincial government pretending to have some measure of control over what might happen at the SkyDome, that is largely illusory at this point in time.

One could argue that they can see what is going on there and one could argue that in theory there is a measure of control being exercised by means of provincial appointments, but in terms of actual control of how things get set up, who gets positioned where, who gets what contracts and who does business inside the dome, my assessment would be that the province really does not have very much in the way of control of that at all, that this is pretty much an independent agency at work. Would you disagree with that?

Mr Magwood: To a certain extent, I think that is probably right. I cannot compare it to other agencies because I just do not know about them. There is a high degree of independence in terms of decisions and it has been so up to this point, subject only to the overall reporting constraint and controls that are already in place.

A comment: I think the situation is different through the construction phase than in the operating phase. Through the construction phase, this thing has moved almost too fast for anyone to follow. The guy next door hardly knows what the other person has just worked out. That is the way it has had to be. It has been very fluid and very dynamic in terms of the growth of it.

As we move now to the operating phase, which is where we are now, predictability has set in. We have a given here. I think the ability of everyone involved, all the board members and certainly the executive committee, to know everything that is going on and to be very close to it is there. We have a group that we call an operating committee, which is really the executive committee today, and it is a joint group of both STADCO and the consortium and it meets weekly. We meet every Tuesday. We met yesterday. We take about two and a half hours and at that time management reports on everything that is happening and anything that is a sticky wicket that really requires the input of the players.

The communication from management back through executive committee and back to the board, I think has been as good as it could be, given the nature of the beast, and from now on it is going to be a whole lot easier to keep in touch with because it is more predictable.

Mr Breaugh: I do want to set aside the construction, because I think that is a different animal and another committee will have its look at that. My concern is essentially that we do not now move to a structure that is confusing, that the public does not have—it is fine to have internal communications; that is important for your purposes. From our point of view, you need to have that but you need more. You need a public reporting process and I think the public has a right to have access to this information. I am a little concerned that at this point in time, we do not set up what is in essence a private corporation in a publicly funded facility.

I do not want to hear the noise that the public does not have a right to know; I think they do. I think we have a right to see how this structure operates in theory and in practice. To be honest about it, I think it is premature to make judgement calls about that kind of stuff now, but I am already getting letters in the office about the private club and the rich sports barons and all that malarkey.

People are starting to get their act in gear about that and we are going to have to have some mechanism that says: "Here is what happened at the SkyDome last year. Here is who the players are. Here is how the decisions are made. Ontario discharged its responsibilities by doing this, this and this."

My main concern is that this is not a private corporation. It is supposedly an agency of the crown. It has a lot of latitude in how it does business, but it is listed as part of the province of Ontario in some sense. I think we need to have that as clear as we can and a reasonable amount of public reporting involved.

I do not want silly government rules put on SkyDome, but I do recognize that there is a fairly substantial public investment in that and for that, and because we pretend it is an agency of the crown, we need to know what is going on there.

Let me conclude with one little question: Are you reasonably satisfied that the reporting mechanisms to the province are enough?

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Mr Magwood: Presently, I am. Whether in fact they are is for someone else to determine, but I think what we have is a system in place that works. It probably should be revisited to ensure that it does work because the players are all going to change. All the people are going to be different and the next phase of people will not be as close to and comfortable with all the information as the last phase, because the last phase was an intimate involvement.

Mr Breaugh: This is kind of your baby. In a public sense, you are the one person who is more identified with the SkyDome and its birth and getting it operational than anybody else. I think most people are likely to say, "Congratulations for getting this thing done." There might have been a few unorthodox techniques used on the way through and there might have been some pretty difficult moments near the end and there will be some more in the near future, but that phase of it is done.

My concerns then would now centre on the next part of it, the operational part. Even in your explanations this morning, as somebody who has known this thing almost from its beginning, it is getting complicated in a hurry. To understand who is doing what at the SkyDome is going to be a real

challenge in the future. My concern, basically, is around, is it realistic to portray the SkyDome as an agency of the crown. Is it really that? I am not at all convinced that it is.

The Chairman: Who is the manager of operations?

Mr Magwood: Bob Hunter.

Mr Marland: Mr Magwood, at the outset, I want to congratulate you. I think that for those of us who have been in politics a long time, we know that the most challenging job anyone ever has is working with government at any level and politicians at any level, plus trying to work in the real business world too. I think your achievement with your position in heading up this tremendous project has indeed been a commendable achievement for you personally and obviously speaks very well of your personal ability. So I do want to congratulate you.

I also want to congratulate you on opening the roof on opening night. I was there and I would have been very disappointed if it had not been opened in spite of the rain.

Mr Breaugh: You have a clothing bill that you want to present.

Mrs Marland: I am the member for Mississauga South and Harold Shipp is one of my constituents, so on some of my questions, you will understand where I am coming from. I actually was a member of Mississauga city council at the time the Trillium Dome Corp was organized, and obviously I was very much in favour of the domed stadium being at Highway 10 and Highway 401. Now that it is downtown and it is there at great public expenditure, at great public cost, and knowing that the Trillium Dome Corp was primarily a totally private sector project with some government assistance, I want to look at where we are going with the domed stadium from this point forward.

I am interested to read that you have agreement for the 10-year leases for the boxes and the preferred seats and that there is an option to renew for three years. I am quite sure you are not familiar with some of the other government agencies this committee has looked at, but right now we are trying to resolve the problems of the leases at the Ontario Food Terminal, which were granted in perpetuity and they turn over to the highest bidder.

I am wondering where we are going to be in 13 years' time with the existing agreements that we have with these 27 consortiums that decided to make that initial \$5-million investment. Are they going to have control over renewing after 13 years? As far as I can read from our researcher's notes, at the moment it is a 10-year lease with a three-year option. I am hoping we will be able to avoid with the domed stadium the kinds of problems we have with another government agency, namely the Ontario Food Terminal.

The Chairman: Mr Kravis, take a chair beside Mr Magwood. You are quite free to do that. Mr MacArthur, if you want to sit on the other side of him for company, you could do that also. We want to get you all on camera so if there are any problems, we will have a record of it.

Mr Magwood: I am just asking Jamie where the source of that three years came from. That confuses me. I think maybe there is an error in the research on this particular point. Let me describe it as I understand the existing arrangements.

The existing arrangement with the 27 consortium members is such that their \$5 million is actually broken up into three different pieces for different reasons. First, there is a \$4.2-million contribution which is stated to be for a 10-year period. That is styled that way for certain tax reasons. Second, there is a payment of \$300,000, which they have already paid, for the right to renew for what takes them up to the balance, for 99 years. These are 99-year arrangements with the consortium members. The third piece is that there is \$500,000 which is deemed—once again, this is for structural reasons—for the equity in the ownership of what they bought here for which they receive certain value. So in total, the \$5 million has already all been paid.

Now, for them to renew their rights and extend them from the end of the 10th year up to the 99th year, they actually pay \$100,000 at that point in time. Given the investment that has been made, it is highly unlikely they would not make that payment to continue to enjoy the benefit.

Mrs Marland: So what we have is exactly what we have with the Ontario Food Terminal, which is leases in perpetuity.

Mr Magwood: Yes. Let's distinguish between their rights and the lease. These are not lease arrangements with the consortium members, these are contractual rights in return for payment of \$5 million. These are really 99-year arrangements that are broken up into a 10-year piece and then a right of renewal for \$100,000 to go up to the balance.

Mrs Marland: After 10 years, they are going to pay \$100,000 a year?

Mr Magwood: No, an additional once-off payment of \$100,000 to extend it out to the full 99-year period. So for \$5.1 million there is a 99-year contractual arrangement and for that they receive a private box, four parking spaces, a backlit sign, a first right to buy advertising in the stadium at market rates and a preferred supplier right, which is different depending on the individual consortium member. So it is not really a lease arrangement other than in so far as it relates to their boxes.

The balance of the boxes, which takes us up to 161 boxes in total, are licence agreements with individual licensees, and those are 10-year contracts for each one.

Mrs Marland: So the 27 who bought the boxes at \$5 million bought the right to use them for 10 years.

Mr Magwood: Right.

Mrs Marland: But they can continue that use after 10 years by paying only \$100,000?

Mr Magwood: That is correct. What I am saying is that it is structured that way from a corporate and tax point of view, but conceptually, I think it is easier for all of us to think of it as a 99-year arrangement.

Mrs Marland: So for \$5 million, they have that box for 99 years.

1100

Mr Magwood: Correct. In addition to that, they get a shell; there is a concrete box they get. They must finish the box and they must purchase the tickets for the people who attend in those boxes from the promoters, from the Blue Jays, from the Argonauts or whatever.

Mrs Marland: Are those tickets the same price as the best seats in the stadium?

Mr Magwood: Yes, they are. Actually, they are the highest-priced tickets in the facility.

Mrs Marland: If I, as an individual, had entered into that agreement and I pay my \$100,000, which then gives me the 99-year right, after 10 years am I able to transfer that right to anyone else? Do I have control over that box or does the stadium have to approve whoever else I might want to---

Mr Magwood: Your entitlement to that box is by virtue of your interest in the consortium. A consortium member cannot transfer his interest to anyone else unless it is approved by the consortium itself and unless the stadium corporation also approves that transfer. In fact, there has already been some transfer of consortium rights to other third parties.

Mrs Marland: At a profit to the original investor?

Mr Magwood: That we would not know. The price of the transfer is not considered to be a right that we have got to approve, only who the player is, the person who will be exercising the right.

Mrs Marland: What we are saying is that those individuals who invested the \$5 million originally may transfer those rights to another party with the approval of the board but at a price that is private.

Mr Magwood: That is correct.

Mrs Marland: So it is possible for those people who bought those boxes for \$5 million to make money on them by selling them.

Mr Magwood: Right. I am not nit-picking, but the \$5 million is not just the box, it is a package that was purchased. The box is a key element to it, but these other elements are also there. It is as if they have an ownership interest and that ownership interest can be sold by them to whomever for whatever price but the whomever is subject to approval.

Mrs Marland: So you could compare it to buying a condominium in a building, an office building or a residential building.

Mr Magwood: Yes.

Mrs Marland: You have bought that unit for \$5 million and you can sell it in a free, open way as far as the price is concerned as long as you have the approval of who the other purchaser is from the board, but the price is not public.

Mr Magwood: That is correct. The balance of the boxes, the preponderance of them are held by nonconsortium members; some 110 boxes are held by other people. Each box has its own price tag depending on where it is. Those people can transfer their interest in that box or can form a syndicate, which a number have done, in terms of the sharing of the cost obligations. It could be that in the formation of that syndicate there could be a profit in it to the original licensee. That is their business. From our point of view, what

we have is a head contract which we enforce against the original signing party.

Mrs Marland: Is there any right to the box owners to share in any profits of the operation of the domed stadium?

Mr Magwood: No.

Mrs Marland: Conversely, if the corporation does not make money—let me just ask you, what is the projection of the operation of the domed stadium? Is it going to be something that is going to be a financial benefit to the taxpayers of the province? Is it going to make money?

Mr Magwood: There are two aspects to that. The operation itself is projected to be very profitable. The province is an owner of that project to the extent of its investment. It has a \$60-million numerator, if you like, and the denominator is the aggregate of what the province has invested, \$30 million from Metropolitan Toronto and \$30 million from itself, and all the interest from the consortium. Approximately, then, that fraction is a third.

About a third of this project is owned by the province and about two thirds by the private sector, notwithstanding the fact that the voting control is skewed in favour of the province always, as I mentioned earlier. To the extent that the project is profitable, then the province, as a one-third owner in it, enjoys the reward that flows from it.

The other aspect of it is the public benefit. I guess you can argue that there is public benefit within that financial return. The other thing of the public benefit is an expanded answer, which I do not know whether you want, but that deals with taxes, permit fees and the many other spinoffs that flow from it.

Mrs Marland: If the operating costs some years are greater than the profits, is there any way that is charged back to these box owners?

Mr Magwood: To box owners, no, but to consortium members, who are a part of the ownership group, yes. If there is a cash flow deficiency, a difference between operating profits that are generated and losses, if you like, since there is a net loss from the project, then the overall responsibility falls back to the partnership that owns the building. The mechanics for that I can take you through, if you want. We will be doing all this with the standing committee on public accounts, I know.

Mrs Marland: You do not need to.

Mr Magwood: I know you do not want me to get into that.

Mrs Marland: I did not know that the box owners could transfer their rights by sale to another party, and I guess I am a little concerned to hear that this morning, only because of the situation this committee has been wrestling with with the Ontario Food Terminal leases which are the same, in perpetuity. Obviously it is too late to change it. It is all enshrined now, obviously, with the agreements you have. I hear very clearly that you are saying there is no profit-sharing for those people. The 110 boxes, or the other number of boxes that are not owned by those \$5 million investors, what kind of agreements do those people have? Are those 110 leases?

Mr Magwood: They are called licences. It is just a legal interest. A lease would be an exclusive right; a licence is an entitlement to use. These

are 10-year licences. The consideration paid on each one of them varies depending on location. There are actually three price ranges. In all cases it is the same in the sense that they receive a shell. They pay for the finishing and they also pay for tickets. There are certain minimum contractual requirements in terms of the purchase of tickets with respect to the Blue Jays. Each boxholder is committed to purchase 16 Blue Jay tickets for each and every game.

Mrs Marland: But they do not have to buy any other tickets for events through the year unless they use the box.

Mr Magwood: That is correct, so either the lights are off, or if there is an individual there they must have a ticket that they purchased for that event.

Mrs Marland: Let's just talk about those 10-year licences, then. What happens to them at the end of 10 years? Do they have the first right to renew that licence?

Mr Magwood: The arrangement, I believe, is that in almost all of them there is a right of renewal at the then-current market.

Mrs Marland: So if you have not got your foot in the door at the beginning, either as one of the \$5 million investors or you have not purchased one of these 10-year licences, you are out of luck 10 years from now. It is not going to be easy for other people to get---

Mr Magwood: My hope is that you would be out of luck. You are going to be out of luck because people renewed. They would have renewed and paid then-current market because it was a good investment for them. Just as a matter of interest, initially we went into the sales program for the boxes and we increased the number of boxes significantly from what was originally, I believe, 76 boxes to 110 to 161. The economics of that was certainly questioned internally among our group. The effect of it, though, was that as of this point in time I believe we have now sold virtually all of the boxes. We have received in capital approximately \$40 million and in addition to that have annual payments coming in from boxes.

This has been a very significant source of capital to us. By capital, what I am talking about is really the prepayment of the first and last years of those licences.

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Mrs Marland: Can those licences be transferred?

Mr Magwood: Yes.

Mrs Marland: If I have a licence, can I transfer it within that 10-year period to my friend who now wants to pay for it?

Mr Magwood: Yes. From our point of view, we would have to consent to that. We would look at that and not release you from the covenant. If that were the case and the assignee did not ring any bells in our heads, then we would approve it.

Mrs Marland: Can I transfer it at my own profit?

Mr Magwood: Yes. The terms of the transfer would not be our business, only that consent to assignment has been asked for from us. Basically, you are on the head contract. You continue to have the financial responsibility and if you have worked out an arrangement with an assignee, that is your business. That I might say is typical in the real world of commercial leases.

Mrs Marland: Yes, it is, but in the real world of commercial leases the taxpayers of Ontario have not invested \$60 million in the project. In the real world, we are looking at a totally private-sector construction from the beginning. In this case, we are looking at a joint investment between the private sector and Ontario taxpayers.

My questions are based on what is in the best interests of the Ontario taxpayer.

Mr Magwood: Not to be argumentative, but I have just a comment. I do not dispute that. You are absolutely right. It is the nature of the structure but, had there been a condition on nonassignment and a constraint on the ability to profit or not profit from it, then we would not have enjoyed anything like the success in selling the boxes that we did.

Mrs Marland: No. I am sure you would not. I understand that very clearly. I do have more questions but I am going to yield the floor to my colleague.

Mr Runciman: I am going to ask a few questions about the financial aspect. I chaired the standing committee on public accounts during your earlier visits to this place. I have some interest in some of those matters and think this committee should as well, even though you are appearing before public accounts at a future date. I think that is one of the difficulties and one of the down sides in being a crown corporation. You have to be running up here once or twice a year and justifying your activities, rightly or wrongly.

I would like to ask you something Mr Breaugh was pursuing. I am just wondering whether, indeed, it is the sort of thing that the government should be continuing with—this kind of a relationship—a crown corporation schedule 2 agency. Perhaps a more appropriate avenue to be considering is the provincial government's removing itself from an ownership or management role in a sports facility and recouping its investment.

I can appreciate that the intent of the original investment was risk capital and there had to be some incentive to get this magnificent facility under way, but I am wondering if the government should continue to play a role in an ongoing way in this facility. It is up, it is operating and everyone is proud of it. I wonder if at some point in the very near future it might be more appropriate for the government to step back and get those funds back—it has made a wise investment for the future—and return the contribution to the municipality of Metropolitan Toronto and the taxpayers of Ontario. Have you any views on that?

Mr Magwood: Is that a question?

Mr Runciman: I guess it is. I would like to hear your views on that.

Mr Breaugh: About half a speech.

Mr Magwood: That might be appropriate. My view of it—this is

personal, I am not speaking on behalf of the corporation—is that the project could not have been built had it not had the muscle and support of the province, not only in having that support, but the obligation, therefore, to style decisions and govern ourselves in a way that there was respect for the public and the interests of the public.

Notwithstanding there having been other views to that, I submit on it that, on balance, what has been built is a facility that has been very sensitive to the needs of the public and to the accountability of what is happening because those people are really the ultimate constituency of users.

I believe that. That is not an empty comment. The role has been critical to get it where it is. The role has also been critical to give to the private sector the confidence that it will have that kind of governmental support to get it through the hoops, the red tape, the bureaucracy and all the other things that basically crater most big projects.

At this point in time, though, I think the considerations are probably different. If that is your view, I would agree that it certainly could be revisited. Whether it should or should not be now is someone else's call. I do not think it would hurt very much any more, not as much as it might have.

Mr Runciman: I am sure there are still definite advantages to being a crown corporation with the speedy passage of liquor regulation changes and things like that, that for some reason or another seem to have been expedited to meet the demands of the dome. I am not being critical of that; I am just acknowledging it and making a point of it.

I wanted to talk about the significant cost overruns. The estimate of \$532 million is included in here. I guess you have been saying at various stages of this process that that is not a final number—I am assuming that \$532 million is not a final figure, that at some point down the road, we are going to hear another number. Is that an accurate assessment?

Mr Magwood: Half of it is accurate. It is not a final number in that the dollars have not all been spent and it is not complete. At this point I think about 85 per cent of the dollars have actually been spent and therefore it is firm. It is the last end, if you like, that remains to be spent, where theoretically there is some uncertainty.

I think that the \$532 number has been struck at a point in time when we do have a lot of givens and lot of knowns that we did not have earlier when estimates were being done. Also, there is a high level of knowledge of what is left to be spent with a track record behind us. We are well protected.

The other element too is that we no longer are under the kind of gun of the timetable we had before. We can now move in the normal course as far as contracts are concerned. We do not have to work with overtime and, because of the volume of the work left, which is much less, we are not working in the same kind of a competitive environment that we had before.

Mr Runciman: In the operation, in respect to the obligations, commitments or responsibilities of the provincial government, when you have cost overruns—I am talking about the final figure, which is a significant number over the original estimate—is there any obligation on the provincial government in respect to this significant amount? You may have answered this in replying to Mrs Marland's question. I am just curious. When those decisions were made or taken, was there any implication in respect to additional tax dollars having to be paid at some point? Was that a possibility?

Mr Magwood: No. The order of events was that as something new happened or an extra was added or whatever that affected capital costs, then budgets were reformed, approved by the various committees and, virtually all the way through it fortunately, the income stream improved with those costs. So the project continued to be viable from the point of view of arranging bank financing.

The increased costs were covered really from one of two sources every time: either more equity from more partners or more money—forming schemes, or from increased debt from the bank which was supported by improved cash flows.

First, there was never an intent and never has been any approach to the government whatsoever to increase its equity contribution. Second, the source of funds came either from cash or the bank. In terms of the bank, there are implications back in terms of continued liability to the province as that liability increased.

Mr Runciman: That is what I was wondering about in terms of contingent liability. You made these decisions, for example, and we all have heard these stories about construction workers working around the clock at triple time, and so on. You certainly could not be assured of all of the funding being in place, etc, I would not think. Some of those decisions, as you said, were sort of going on without—I guess the major consideration was meeting your proposed deadline.

I am looking at this in respect to—obviously this is nothing in a negative way. Nothing occurred in a negative sense in respect to having to fall back on the provincial government's contingent responsibilities, but I am looking at it in terms of another proposal for downtown Toronto, that is, the opera centre, and the fact that the estimates there are something like \$200 and something million, with the province putting in close to \$70 million. I think that, hopefully, everyone will be taking a close look at the experience of the dome in respect to public commitments.

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I guess just a couple of questions arose out of curiosity. I know there has been talk about a National Football League team at some point in the future. I see someone suggesting—I know this was raised here in public accounts when we met with you, I think in the original meetings—about the design of the stadium and the fact that you perhaps could not, in our discussions then, accommodate an NFL team if that became a real possibility for Toronto.

I see the issue being raised again that for anyone considering having an NFL stadium there is a minimum of 60,000 seats. Can the dome accommodate that sort of seating arrangement if indeed that becomes a realistic possibility?

Mr Magwood: Yes. The current capacity for a Canadian Football League field for what we have now is about 54,500. By virtue of the different size of the fields—the end zones are shorter, it is a narrower field—the seats could be added to take us up to approximately 60,000. Not that we have really gone any further than to ensure that we could accommodate any kind of variable, that is, that can be accommodated. It is really very easy to do. There is nothing structural.

Mr Runciman: How are you doing in bookings in the dome? Are you having much downtime or is it fully booked? What is the status?

Mr Magwood: We are as busy as we can physically handle right now. Other managers of facilities who are coming here are amazed at how much we are trying to do so early. As you probably know, we have gone through many different conversions, from baseball to football. We have done them back to back and at nights we have had a half-concert, full-mode concerts. We are booking things out so that really for the rest of this year we are about as busy as we can physically handle.

Mr Runciman: There were some stories after the opening of the dome, as Mrs Marland mentioned, of the roof being open. There were some stories in the local media about lawsuits being launched against the Stadium Corp and yourself. What is the status of the lawsuits. Are they actually going to launch them?

Mr Magwood: There are three suits that are at various stages right now. One of them the particular individual elected not to proceed with, and we paid his drycleaning bill and his cost of deposit with the court. That was in the small claims court. There is another matter in small claims court that is coming up in the next few weeks, and hopefully nothing will come out of that.

There is one other item, which is really the larger one, which is from the folk arts group who collectively have retained a solicitor to commence an action for damage to their costumes. That matter is being discussed and hopefully nothing will come out of that either, but I cannot say that it will not. It is all insured. Whatever it is insurable loss and, second, it is unfortunate. We do not take it lightly. I do not think we are happy that anybody was disadvantaged as a result of that.

Mr Runciman: In hindsight, though, I have heard you comment that you would not do anything differently.

Mr Magwood: We would do it again, for sure.

The Chairman: That is why I took my umbrella.

I have two quick questions before Mr Velshi. I just wanted to clear them up. Is the addition of the hotel, restaurant and health club included in the \$532 million?

Mr Magwood: Correct.

The Chairman: What was the estimated cost? Was it \$100 million for those?

Mr Magwood: I just threw that out as a ballpark figure. That is approximately correct.

The Chairman: So for the people who want to know why the cost increased substantially, it is because of these additional revenue projects that you are putting in.

Mr Magwood: That is right. To break it down, actually the base stadium itself amounts to a percentage that may be not much more than 50 per cent of the overall investment in the project. It has really become very much of a commercial enterprise. With that, these revenue-enhancing opportunities were added. That is really why the financing of this became so much more viable and it is also why the number of partners that were added were added. We started off with 10 partners and now really we have 30.

Mrs Marland: Can I just have a supplementary on that? If we have spent \$100 million additional for the hotel and it is revenue-generating, is it the hotel that is going to gain on the profits of the operation of the hotel, or is the corporation and ultimately the partnership of the province going to benefit from that?

Mr Magwood: We have an operating agreement with CP Hotels for the hotel. The ownership of the bricks and mortar in the hotel is with the partnership. All elements within the complex are owned by the partnership. Nothing has been hived off, other than through lease or licence-type arrangements.

In the case of the hotel, there is an operating agreement with CP Hotels whereby they are paid a management fee and, in addition, an incentive fee. Their incentive fee is 20 per cent of net profits. So 80 per cent of the net profits from the hotel operation come back to the partnership.

Mrs Marland: I see.

The Chairman: What would be the total cost in that facility? I understand McDonald's probably put another \$30 million in to do what it wants to do. Would it be about \$750,000 of total money that is in that domed stadium?

Mr Magwood: It would be a guess, but I would say that there is probably at least \$100 million that has been spent by tenants in the building, over and above the creation of the landlord.

Mr Velshi: My question is along the lines of the hotel that is being built. You say CP has taken on the management of the hotel.

Mr Magwood: Correct.

Mr Velshi: Was that given to them by tender or was it given to them because they are one of the 27 partners in the consortium?

Mr Magwood: The order of events was that the original owner of the hotel rights was CN Hotels and CN was purchased by CP. CN is an investor in the consortium, actually with two units. They invested \$10 million right at the beginning. When the hotel chain was sold, it sold, if you like, the rights to the hotel to CP.

The governing statement in terms of the consideration to be paid for the management contract, once again, is fair market value. We can quite simply look at the current arrangements out in the marketplace for operating agreements for the hotel operator and that is what we entered into with CP Hotels.

Mr Velshi: Does that mean CN got it because it was part of that group of 27?

Mr Magwood: That is correct.

Mr Velshi: The hotel was not given out to tender?

Mr Magwood: No, it was not.

Mr Velshi: Okay. Let's imagine a scenario where a second hotel needs to be built there.

Mr Magwood: A second?

Mr Velshi: Assuming somebody decided a second hotel is needed, who would make that decision, and would the group of 27 again have first kick at that can or would it go out to public tender.

Mr Magwood: No. The way it works is that if that hotel was in the complex then we would, as with everything else that comes up in the form of commercial opportunities, see if there is a contractual responsibility to anybody with respect to that opportunity. In that case there would be one. It would be to CP Hotels, which has inherited the CN right.

CP would be asked if it wants to undertake this opportunity and if so, we would set out what the commercial arrangement would be, based on our own research. If they said no or they were not prepared to meet what we say is the commercial market rate for it, then we go to a third party.

Mr Velshi: Where we have seen the questioning about conflict of interest, I think what, as politicians, we see as a conflict of interest is, in the eyes of a business person, just good business; it is not a conflict. I think this is where we are coming from. Mr Breaugh mentioned that.

I like Mr Runciman's idea that the province and the city act as facilitators or catalysts in investment to get something going and back off from it and leave it as a business venture. I think it makes a lot of sense and the province and the city may just use those surplus funds again to get into something good or equally good. I think that is something that perhaps our committee should be looking at if you feel that is the way it should be going.

Mr Magwood: I would not want to speak for the corporation. I can get hurt for commenting on that.

Mr Velshi: Okay. Good.

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Mr South: I will give you a little philosophy. I am not a supporter of commercial sports. I think they are obscene, but I appreciate that that is a minority view. I once heard it said that once you put a fence around a sport, you ruin it and I think there is a lot of merit in that.

But I like the idea. I think it is time for the province and the city to get out of it and leave it to private enterprise. I think you guys should be relieved that they would and it would make it a lot cleaner and easier for you. That certainly would be my recommendation. The sooner the province—I certainly would not want to speak for the city—gets out of it the better.

Mr Breaugh: The government takes the risk and the private sector takes the profit.

Mr South: Maybe Toronto should get a payment for taking that risk and that could be negotiated at the time we bail out.

Miss Roberts: I am not going to give you any philosophy, because I do not have any philosophy about sports except that I like watching them. You do not say anything either, Mr Breaugh. You keep him quiet for me.

I am more interested, though, in the province's staying in. This is

perhaps one of the first ventures in which the province and/or public moneys have got together in a partnership such as this. It is a commercial enterprise; it is revenue-enhancing. The taxpayers should be able, from what you have indicated on the operating expenses at least, to get some of the profit, if that is the appropriate term, in some way, shape or form.

I know that the \$60 million was in capital—in equity. I think that is a more appropriate term. I also heard you say today that on the operating basis it should be fairly lucrative. Therefore, as a partner, there should be approximately one third coming back to the taxpayers, whether they are from Metro or Ontario.

I am concerned about your forecast on that basis. It is a risk-taking venture that the taxpayers of Ontario have taken. Indeed, perhaps it should be a profit-taking venture as well. Do you see it as that somewhere in the future, and how long is that going to take? The operation part of it you feel is fine. We could get something back fairly quickly, judging from what you have been able to say today. But also, on the equity side, will our equity have increased in value in five years' time so that the \$60 million that we invested, because of whatever reason, is now worth a little bit more somewhere down the line?

Mr Magwood: The repayment schedule now is such that, just taking general numbers here, this project will generate about \$55 million in its first full year in 1990 in terms of gross receipts. It costs us about \$20 million to run the venture. The difference, which is about \$35 million, is what is available to service debt. As for the projections, I think you asked a few different questions in there.

Miss Roberts: Yes, that is right.

Mr Magwood: Just on that count, I think one question would be the validity and the potential error in terms of forecasting within those two simple numbers, the receipt and the expense.

As far as the receipt is concerned, that is something that I think we have analysed pretty carefully. A lot of it, at least for the first 10 years, is protected. It is protected in that we have long-term advertising contracts, a very lucrative element from our point of view. Almost \$10 million a year come from advertising contracts from many different sources. They are major companies that have executed agreements. They come from club seat holders and from box holders. All of them are corporations in good standing and it is sprinkled out.

Another important source is the revenue from the rentals in the use of the facilities—the Toronto Blue Jays. In looking at sports and concerts as those sources of revenue we have had to be fairly conservative. When you look at what the Jays are doing now, they are way ahead of our forecasts. We would not suggest we change them, because I think we have a slight aberration right now. In forecasting, I think you have to be a bit safe.

Yes, there is risk in our being wrong. It is like everything else. You do your best to put together a set of numbers that can stand scrutiny.

The next element is that in the servicing of the debt, which is that difference that is left for use of that cash flow, our estimate now is that we are probably looking at something like 13 to 15 years to pay off the debt in its entirety. At the end of that period of time, then it will be a debt-free

facility, which is very unique. There are no other large public facilities like this that I know of that are debt-free, generating a significant return.

What is the value of your equity now and then? Who knows? What you know is you are in at cost. If it is a good venture, then that is going to be a good investment.

Miss Roberts: And it might be a very good investment.

Mr Magwood: It might be.

Miss Roberts: My concern is that, indeed, this is a new venture and that it may be the appropriate way to do the opera house or to do many other even smaller projects. I think I am going to be interested in seeing how the partnership shapes up when it is completed and how well that works.

Do you have a reporting function back to the Ministry of Financial Institutions or to Treasury?

Mr Magwood: To Treasury, yes, we do.

Miss Roberts: Is that a public report?

Mr Magwood: No, other than through the documentation that we file, I suppose. We are subject to the Freedom of Information and Protection of Privacy Act, so all of this stuff can be reviewed.

Miss Roberts: But do you do an annual report or are you going to be in the process of doing an annual report at the Stadium Corp or as the partnership?

Mr Magwood: Yes, we have our annual statements as well as the five-year operating plans that go forward and are approved by the minister.

Miss Roberts: But not necessarily an annual report, such as other corporations that are crown corporations do?

Mr Magwood: No.

Miss Roberts: That is not a requirement because you are schedule 2. Is that correct?

Mr Magwood: I am not certain. I do not think it is. I would not think that it should be a problem, though. I think this corporation ought to be telling the world how it is going down there. That should be available to everyone.

Miss Roberts: I think the questions you have heard here today indicate the confusion there is in the minds of the public about how the structure operates, how the various boxes have been dealt with and just exactly what the financial situation is. I am sure that your being here today and your appearance before the standing committee on public accounts will be very helpful.

I am looking forward to hearing from you, either by way of report in the next little while to the Treasury or in some other way, more information that will be helpful to the public to understand what a great venture and commercial enterprise this is. I think that is going to be helpful.

Mr Magwood: A comment, if I may. One thing you said that strikes home to me is whether this is a format that is useful in terms of developing other major public facilities. If it is, what can we learn from it and what are its shortcomings? Do we have a simple way to find that out and let it be known?

The answer is that it is useful and it can be used for these purposes if it is done the right way. There are things that certainly can be improved upon with this format, but the fact that there is a result out there and it has been a fairly favourable result overall, I think indicates that it can be useful for a precedent.

The Chairman: How many staff are there on the payroll, roughly?

Mr Magwood: We have now, I think, about 100 full-time staff and then we have a part-time staff of about 450 or something like that. In addition to that, working within the building, of course, each of the tenants has its own staff. I believe McDonald's has in the order of 1,600. On any given evening, I think we have in the order of 5,000 staff working in the building.

The Chairman: I want to go back to management board with regard to the 50 to 55 members. I would like to look to you for some input on how that could be changed for the better. As Mr Breaugh has brought up, I do not know how you would operate with a board of 50 to 55 members.

I am wondering how you could propose to streamline that in some sense and have representation elected by some of the consortium people of five or 10 people and then appointed from the province enough to make a majority with a lot less size of a board. What size of a board would you recommend would be a feasible operating board to manage the dome corporation?

Mr Magwood: I do not know. You cannot do business with 58 people. Frankly, it is a joke. In what is a number, I think 58 people can meet four times a year to be advised on where things are going and ask appropriate questions, but in terms of input it has got to be negligible. I think a group of about 12 is a group that we work with and that is the size of our operating committee. It seems like 12 people can sit around a table and exchange views and get things advanced.

The Chairman: Having reviewed the corporation, I think it is our job to try to pick out what we think in some ways would be better operating the domed stadium. I have a feeling that the recommendation of a much smaller board may be a very important one. It would be a step in the right direction anyway. Did you have another question, Mrs Marland?

Mrs Marland: Yes, the same as you, Mr Chairman. One thing I want to commend you for is that I am aware you allow individual groups, and I do not know whether it is restricted just to sporting groups, but you allow volunteer groups to fund-raise for their organizations by manning the sale of the beer at the beer stalls. I thought whoever came up with that, it was a very innovative and fair arrangement.

Mr Magwood: That was McDonald's.

Mrs Marland: Was it McDonald's that came up with that? I just want to be clear before you leave. I think you said the original investors are not part of profit-sharing in that the box owners would not share in profits of the corporation. Is that what you said?

Mr Magwood: That is correct.

Mrs Marland: The counter question to that is, if there are deficits in a year in the operating expenditures, who would share in the deficits?

Mr Magwood: The owners, and the owners are Dome Consortium Investments Inc and the Stadium Corp of Ontario. The box holders are simply licensees from that partnership to enjoy the right to use a box. They have no interest or no ownership in the overall facility at all; therefore, no risk and no reward.

Mrs Marland: Obviously, the province then would be part of the profit or loss?

Mr Magwood: Correct.

The Chairman: Mr Magwood, are there any other suggestions you may have that we could perhaps include in our report that would be a benefit for a better operating consortium of management board for the domed stadium? Other than the reduction of the size of the board; I think that is an important one. If there is something that you could tell us after or drop us a note, we would be pleased to hear from you.

Mr Magwood: All right. I am just conferring with the twin towers here. We could not think of anything.

The Chairman: I want to thank you for taking the time to come before the committee this morning. We appreciate the opportunity to ask you some questions, and I am sure that some of the public who are listening will also be interested in what you had to say today. I want to thank you for coming this morning and we will see you later on today.

Mr Magwood: Thank you very much. It is a pleasure.

The Chairman: If I could bring to the committee's attention, our clerk will distribute the letter I got from our psychiatric review person, Mary Beth Valentine. We will be dealing with that at two o'clock this afternoon.

I would also like to advise you that for this evening the tour will take place, as indicated by the clerk earlier, at 5:30, so I would suggest that you perhaps be there before 5:30 so that the tour will leave sharp at 5:30 at gate 3.

Mr Breaugh: Down there?

The Chairman: Yes.

Miss Roberts: At gate 3 at 5:30, is that correct?

The Chairman: That is correct. If there is no further business at this time, we will adjourn until 2 pm this afternoon.

The committee recessed at 1144.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

REVIEW BOARD FOR PSYCHIATRIC FACILITIES
ORGANIZATION

WEDNESDAY 30 AUGUST 1989

Afternoon Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Lipsett, Ron (Grey L) for Mr Ballinger

Lupusella, Tony (Dovercourt L) for Mr J. B. Nixon

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

Drummond, Alison, Research Officer, Legislative Research Service

Witness:

From the Psychiatric Patient Advocate Office:

Valentine, Mary Beth, Provincial Co-ordinator

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 30 August 1989

The committee resumed at 1412 in room 151.

AGENCY REVIEW: REVIEW BOARD FOR PSYCHIATRIC FACILITIES

The Chairman: I call to order the standing committee on government agencies. We have with us this afternoon a delegation that wants to make a presentation which we had requested this morning.

However, before we get into the presentation, I wanted to bring to the committee's attention the fact that there are several agencies for which we have not completed our review: the Ontario Securities Commission, the Ontario Food Terminal Board, the Environmental Assessment Advisory Committee, the psychiatric review board, which we are going to hear more about this afternoon, the Stadium Corp of Ontario, the Royal Ontario Museum and the Ontario French Language Services Commission. Those are all the ones we have been dealing with, and I would certainly like to see us come to some conclusion this afternoon and tomorrow morning to make some recommendations on them.

Miss Roberts: I know we will not be in a position with respect to the French language services: Brad Nixon will not be here and he wants input on that. I know he came back from holiday yesterday so he could hear the presentation. That is one I know we will have—

The Chairman: I do not think there is much of a problem with that one. I do not think that we can do much with it, anyhow—

Miss Roberts: I think it is a very important one and I think we have some very good comments to make on that.

The Chairman: We have some others we should deal with. I would hope that this afternoon we may be able to deal with a couple of them, after we hear from Mary Beth Valentine. Would you like to indicate for the record your position and what you do? I am sorry that when we met before, we thought you were part of the delegation; we did not realize you were prepared to make a presentation. We thought you were with the others. It was a misunderstanding, I guess, and we wanted to have you back.

PSYCHIATRIC PATIENT ADVOCATE OFFICE

Ms Valentine: My name is Mary Beth Valentine. I am the provincial co-ordinator of the psychiatric patient advocate office. The confusion I think often exists, because we are a quasi-independent program of the provincial Ministry of Health. Yes, I was invited by the assistant deputy minister to be with the delegation, but often I think we have things to offer that are a somewhat different perspective than that coming directly to you from the ministry.

May I also just say that if I am slow in reacting, I have broken my glasses and I have a borrowed dime store pair on here, so it is difficult.

May I clarify whether committee members have received a copy of the letter I gave to you last week? I do not want to be redundant and repeat information.

The Chairman: I had copies made for everyone and distributed them.

Ms Valentine: Basically, I would be pleased to answer any questions the committee might have that I might be able to assist with. There were a couple of points I would like to make in particular in relation to the recommendations.

Our opinion of the review boards and the functioning of the review boards is that they seem to function efficiently for patients. The time lines within the Mental Health Act seem reasonable. Generally speaking, the patients get to the board and get the decisions back from the board in a timely manner.

However, when situations do occur where there is either a repeated delay or where a delay is extensive, it does create considerable concern for the patient. I think it also creates considerable concern for the medical staff, although that is not primarily my function here, but certainly it often does extend the period of delay until the physician is able to treat, if it is a competency to treatment decision.

When our advocates in the hospitals have attempted to deal with some of the issues that have come up, generally, again, the regional chairmen are very open to hearing the concerns and trying to resolve the issues.

On a couple of occasions there have been things that seemed impossible to resolve. One of the difficulties appears to be, at least from our perspective, that there is not a single person—that we are aware of—to whom one can go to ask to take on the responsibility of seeing that a resolution is brought forward.

In the situation I have outlined for you, by providing you with a copy of the document we have forwarded to the minister, you can see that the advocate attempted to deal directly with the Health Boards Secretariat, who, I will comment, was very co-operative and attempted to assist but just did not seem to be able to bring resolution, and certainly indicated that the Health Boards Secretariat did not have the authority to give direction to the chairman.

Another situation that seems to occur or sometimes ties in with the delays is that on repeated occasions we have been told that the chairman's report has been dictated but that there is not someone available to do the transcribing in order to get the report back to the patient and back to the hospital. So that is certainly of concern.

On at least two occasions, but on one occasion in particular, which has become a rather high-profile case, there was an agreement that there could be a delay in the period of time for the board to respond. The lawyers for both parties agreed—the lawyer for the ministry, who was representing the doctor in the case, as well as the lawyer representing the patient—but in fact it took five months for the decision to come forward. There were numerous other delays in the case on several sides. This certainly has contributed to a case becoming very high-profile, to a case where the patient's health deteriorated to the point that the court finally ordered an interim treatment order until the issue was resolved.

Although it may be reasonable to expect that at times there would be delays allowable of more than the normal two days for a very complicated case, I believe there should be some direction that a time period, perhaps two weeks, should be set on allowing those delays. When there are new cases, new situations, charter issues being brought forward, it may be reasonable to expect that the board would need more time, but I really believe that a delay of five months is just not appropriate.

1420

Would it useful for me to explain the relationship of our office? Again, I do not want to be redundant with providing background information, but if it is useful to provide any information regarding the patient advocate office, the difference between the advocate and the rights adviser and so on, I would be pleased to do that.

The Chairman: Yes, I think you should briefly. I am aware of it, but some members may not be; and how you are affiliated with the ministry.

Ms Valentine: The patient advocate office was established originally in 1983. The office was established and staff of the office were appointed under section 5 of the Mental Health Act, which is very similar to an inspector's type of authority. An advocate was placed in each of the 10 provincial psychiatric hospitals. We have a small head office: myself, as a co-ordinator for the 10 provincial sites, legal counsel, and a small support staff.

We are set up basically to function independently from the psychiatric hospitals branch. My official reporting is directly to the deputy minister. My operational relationship is directly with the assistant deputy minister, previously of mental health, now of institutions. On an ongoing basis I have contact with the director of mental health operations, who is the person the hospital administrators report to within the ministry.

The material I gave you will have dates and so on, but in approximately early 1984, a role of rights adviser was put into place. Rights advisers have a much narrower role than patient advocates. Patient advocates will address any issue a patient brings to them. Traditionally, about 40 per cent of the issues have been legal, and about 30 per cent each therapeutic issues and social entitlement types of issues.

The advocate's role is basically to advance the patient's concerns and attempt to seek resolution for those concerns. The rights adviser's role is much narrower. It is considered a paralegal role. The rights adviser must visit when a form is completed by the physician. Originally that was just a form of involuntary certification; now it also relates to incompetency determinations for any one of the number of reasons that physicians are able to determine people incompetent, and also for placement issues with adolescents who are 12 to 15 years old.

The rights advice system operates in all psychiatric facilities, but only in the provincial hospitals by the psychiatric patient advocate office, across the province in general hospitals and in the four hospitals that are most commonly referred to as private, although they are not actually private hospitals: the Royal Ottawa Health Care Group, Clarke Institute of Psychiatry, Sudbury Algoma Hospital and the Homewood Sanitarium, which are psychiatric institutions not operated directly by the ministry. In the psychiatric wards of general hospitals, rights advice is provided by members of the bar through the legal aid panel.

At the moment, there is an evaluation under way that is looking at rights advice as it is provided both within the provincial system and as it is provided by legal aid.

There are time limits, so rights advisers are required, after they receive a copy of the certificate the doctor completes, to visit the patient, make efforts to ensure that the patient understands the information on the certificate and to inform the person that he has a right to appeal the decision to a review board, that he has a right to a lawyer and to legal aid if he is financially eligible: within the 10 provincial psychiatric hospitals virtually all our patients; it is very rare not to have someone who is eligible for legal aid.

The rights adviser then will take the information, the decision of the patient, if the patient chooses to go to the review board. The rights adviser will then put things in motion, so to speak, contacting the person within the hospital who sets up the review boards, etc. The rights adviser will also take the legal aid application and will obtain a lawyer for the patient from a list of lawyers provided by legal aid of people who are interested in doing mental health work.

That in itself can present problems, both for the patient and therefore indirectly for the board at times, when there is a limited number of lawyers interested in doing mental health work and doing legal aid work. It is compounded by needing lawyers who, first, will take legal aid and, second, who are interested in the mental health field. We have noted in one year of recent statistics that in about 25 per cent of cases when a patient wanted a lawyer we were unable to obtain a lawyer for the person; a full third of that time actually happened in the North Bay area. So there is a need, perhaps, for direction to legal aid to be doing more education encouraging lawyers to participate.

It makes it difficult, I believe, for both the patient and the board if there is no lawyer available or if a lawyer is obtained at the last minute and has not had adequate time to look at the record and prepare the information in order to be able to present appropriately to the board.

Perhaps I should stop there and address concerns you have.

The Chairman: I wanted to ask you the first question, with regard to the reasons or decisions. There is a time limit when they are supposed to be made by the chairperson.

Ms Valentine: Yes.

The Chairman: Has that time limit been expanded? Are there more cases now taking a long time to get the decision?

Ms Valentine: I do not believe there is generally across the province, but in specific instances there are repeated problems.

Mr Velshi: You said you report directly to the deputy minister.

Ms Valentine: Yes.

Mr Velshi: Have you brought these concerns to the deputy minister?

Ms Valentine: We have brought some concerns to the deputy minister.

The issue of the delays we have taken directly to the minister. I guess I should state that officially I report to the minister through the deputy. The minister of the day and the deputy of the day make decisions about how they want that reporting to be carried out. The minister has been very open to requesting that concerns be brought to her attention.

In this particular case, because review board personnel are appointments of the minister, we felt it appropriate to take this issue directly to the minister.

Mr Velshi: Has any action been taken on this?

Ms Valentine: No. Our information went to the minister on 22 August, so it is early, I would anticipate, to receive a response.

Mr Velshi: So what you are expecting us to do is just be supportive of what your concerns are.

Ms Valentine: What we would like to see the minister do is address the issue and perhaps clarify whether there is someone who now has the authority to make certain decisions or give direction to a review board; if we are missing information we have not been able to find, then I think it is important that we are aware of that and that other people are as well. If there is no one, then we believe it is an important issue for the minister to look at, concerning appointments and what accountability is and where ultimate decision-making lies, so that when there are problems they can be resolved.

Mr Velshi: My second question is, if you do not get a lawyer who understands the mental health field, what do you do at that point? Do you ask for a delay or do you just go with somebody who is not so familiar?

Ms Valentine: It is up to the patient. The advocate or the rights adviser is there as an agent, more or less, of the patient. That issue would have to be explained to the patient and there would have to be a decision. I am aware that there are times when the board has requested a delay—again, I do not believe that is frequent—suggesting that the patient would be better to have a lawyer. The issue, of course, is that with the board sitting only once a week, that automatically means the patient's status remains the same for that period of time.

1430

Mr Velshi: Do the boards meet regularly or are there times when they do not meet, when they cancel out?

Ms Valentine: Within the provincial hospitals they are scheduled on a regular basis because there are enough hearings. In the general hospital psychiatric wards, because so many fewer people are certified to start with and also fewer incompetency determinations are made, review boards are held only on an as-required basis.

Mr Breaugh: One of the things you have brought forward is that the process does work as a general rule but there are some holes in it. For example, I do not understand the reluctance on the rather specific case that has been brought before us.

It seems to me I have seen that act before, where you are asking someone for a decision and the nondecision you get is: "We have not written it yet. We

know what the answer is, but no one has been able to type it out and inform people." Is it because there is no real recognition of this chair of the health board secretariat, that role is not clear enough? What is the problem here? Why can the minister not intervene? Why cannot some senior person such as the deputy minister intervene? It certainly does not look like a great legal problem, it is a problem that somebody cannot get the typewritten transcript put together.

Ms Valentine: From what we can see at this point, it seems to be a lack of clarification about who has the authority to say: "Get this done. These delays cannot continue. If these delays continue, there will be certain actions taken.

Mr Breaugh: It just looks like there is a little something missing in the act, that if something went wrong this is where you turn to and this person clearly is responsible for saying that.

Ms Valentine: I am not sure that it is even a matter of a necessity of the act. I am more inclined to think it is probably an administrative issue, probably at the most a regulation to the act, but I would not see it being an issue that it had to be spelled out in the act. Certainly, administratively it needs to be clear.

Mr Breaugh: It is frustrating when you find these things. Do you think the chair of the health board secretariat is the appropriate person to do that?

Ms Valentine: I quite honestly cannot answer that in any knowledgeable fashion. My understanding has been that this was the first step for us to be able to go to when there are problems and that would be the authority that is above the review boards. I just do not know enough about the health board secretariat's authority and whether that is the most appropriate person. It would seem to me to be logical. The health board secretariat might suggest that there is someone who is more appropriate.

Mr Breaugh: One of the things that had occurred to me is that when the review board was here, it seemed to have what I guess it would be fair to classify as kind of an informal meeting process, but there is not much in the way of structure there, there is not much in the way of formality and it does not really report to anyone. We discussed things along the lines of having them do an annual report, making recommendations. Am I wrong in saying that this is basically just an administrative problem? It does not appear to me to be anybody trying to stop the system by means of not typing the decision.

Ms Valentine: I agree with you. I believe it is an administrative issue.

Mr Breaugh: Would it be a reasonable way to proceed to try to perhaps strengthen that—I do not know whether they call it a chairman's panel. What was the title they used for that?

Ms Valentine: I believe Mr Brown who was here was the chairman of the chairmen. My understanding is that is still very much a peer relationship, that the chairman does not really have the authority to direct other chairmen.

Mr Breaugh: Perhaps we might turn our minds to what is the most appropriate body to make a decision like that. I guess in the absence of any other appeal mechanism, you would do what you have done, you would appeal to

the minister and the minister would intervene, but the minister may feel this is a judicial body at work here and maybe he or she should not. I think somebody has to take the responsibility for that.

Let me pursue one other area with you. You have brought it up and I know it is a bit of a sticky one.

We are basically proposing under this system that it is not a court system, that you do not do what other jurisdictions have done unless the system fails and then the courts can come in. But one of the things that is a little difficult is that if there is not any advice available, if there is no legal aid lawyer who is prepared to provide advice to a person, the system falls apart. You discussed a little bit about asking the legal aid people to do some almost promotional work in that regard. Is there no one else within the ministry who would be an appropriate resource you could turn to?

Ms Valentine: We have, as a matter of fact, in the past six months or so, jointly, involving the ministry, our own office, the legal aid office, etc, conducted educational sessions for lawyers who are interested in relation to the Mental Health Act. Legal aid has, I believe, taken a step in attempting to address the issue by saying that lawyers whom they are going to fund through legal aid must take advantage of this mini course in mental health law. So at least they are saying that those people who are acting for people should at least be working with the right Mental Health Act. It has happened in the past that they have not been.

However, I think it becomes an issue of funding to some extent, as most things do, to require people to take certain courses or to do the outreach to try to increase the mental health bar, to do the promotional types of activities that might be necessary and then fund both the program and perhaps the people to get to where the program is being held, etc, is once again an issue of funds. I am always cognizant when I am making recommendations that that issue has to be addressed as well.

Mr Breaugh: One of the difficulties of working through the legal aid system is that you have to recognize that it is not a uniform system, to be fair. It is not the same everywhere in Ontario.

Ms Valentine: That is right.

Mr Breaugh: If you live in the city of Toronto, legal aid is a pretty different type of animal than if you live in North Bay or Parry Sound or some place else. So maybe we could turn our minds to something that would give us a little better, more fair approach than that.

One other thing you raise is one that interests me. The matter of when you can have a hearing is often a matter of where you are. If you are in a psychiatric institution where the board meets regularly, the hearing comes pretty quickly. If you happen to be in a hospital, in a psychiatric ward, it might take you some time. Do you have any evidence that there is really a lot of delay in there?

Ms Valentine: What I have information on—and I do not have it with me—is that a significant amount of information has been developed over the past year in conjunction with the evaluation of the rights advice component that is going on. I am hesitating, knowing that the report is not complete yet and the report has to go to the minister, but there are statistics showing differences in periods of time for people receiving rights advice, with, in

some settings, there are great delays, and even knowing that they have a right to appeal, let alone actually getting to the review board.

The requirement of the act is that within seven days of the board receiving written notification that the person wants a hearing, the board must convene a hearing. There have been no significant concerns brought to my attention that there have been delays. The other issue, of course, is that because we do not really have direct contact with the general hospitals, it would be a less usual situation for me to hear of a delay in the general hospitals.

Mr Breaugh: Just to pursue this for a moment, it strikes me that there really should not be a problem. For example, in my area there is a psychiatric ward at the Oshawa General Hospital and an institution in Whitby. If you are in the Whitby institution, it is set up to do business, to see that the process works, that your advice is available. I cannot tell you, quite frankly, whether legal advice is readily available there, but I have not heard the complaint so I assume that it is. If the problem is simply that you are in the hospital as opposed to the institution, the institution is certainly close enough and the volume of business is not that large, so it should not be impossible to bring the two a little closer together. Is anybody examining that?

Ms Valentine: I have not heard of that being examined at all. My understanding at this point is that the board convenes at the general hospital. That is the way it usually takes place.

1440

Mr Breaugh: Again, it goes back to the things we were discussing earlier. It seems to me that the only people who have this information and are really in a position to advise us on that kind of thing would be the review boards, and they do not report.

Ms Valentine: Yes.

Miss Roberts: I have a brief question. Do you feel that the patient advocate program should continue?

Ms Valentine: Yes, definitely.

Miss Roberts: Do you not think it should be a rights adviser program instead of the patient advocate program?

Ms Valentine: Definitely not. The rights adviser component is an important component but a very small component of what actually happens. Within the facilities, there is one full-time patient advocate in eight of the 10 hospitals and two full-time advocates in Penetang and Queen Street.

With regard to rights advisers, the four hospitals that have the largest number of certificates have a full-time rights adviser. The other hospitals have part-time rights advisers, based on the number of certificates that are completed, etc. The role is much narrower for the rights adviser. It is an important component but certainly not—

Miss Roberts: What type of case load does the patient advocate take for going to review boards?

Ms Valentine: The patient advocate does not formally represent a patient at a review board.

Miss Roberts: I wanted to make sure that everyone was aware of that. The patient advocate does not do any review boards.

Ms Valentine: No, definitely not.

Miss Roberts: They do the same thing as a rights adviser as well, and that is find a lawyer for the review boards outside, besides all the other work they do within the hospital. I understand that but I want to make sure that is very clear to all other members. They are being paid to be a lawyer but—

Ms Valentine: No.

Miss Roberts: Well, to be an advocate.

Ms Valentine: To be an advocate. I should clarify that again just for committee members. Because the mandate is a broad mandate, it is not a mandate that allows the advocate to act even as a formal legal advocate. Patient advocates come from a variety of backgrounds. Traditionally, about a third of the advocates in the program have been lawyers, but it is coincidental when they are. The competition is open. Certainly, several of the advocates come from health-related backgrounds.

The requirement is there that the rights adviser see every patient who has a certificate completed. We are still noting, in our most recent year's statistics, that about four per cent of the time the patient is still asking to talk to the advocate, even though the rights adviser is giving him basic information.

Our direction to our rights advisers is that if a patient has a question that is beyond the basic, straightforward information related to the forms and the function of the rights adviser, the referral should be made to the advocate and the rights adviser should not get into the broader types of discussions.

Miss Roberts: What percentage of the cases seem to have delay?

Ms Valentine: In getting a response?

Miss Roberts: No. You have brought forward a particular problem about not getting the reasons out quickly. What percentage?

Ms Valentine: I cannot give you that off the top of my head, I am sorry.

Miss Roberts: Would you say it is over five per cent?

Ms Valentine: No, I do not believe it is. It is a small percentage.

Miss Roberts: It is a very small percentage, so this is not a very big administrative problem even.

Ms Valentine: No, it is not. As I say, I really believe that probably the review boards are among the most efficient boards functioning in the province.

Miss Roberts: And you have a problem with maybe one or two chairmen.

Ms Valentine: Sure. I think it is a matter of just knowing what to do with the problems when they arise rather than suggesting that there are major problems with the boards in their functioning.

Mr Runciman: I want to clarify one thing. I was under the impression that advocates have on occasion appeared before review boards, I guess at the request of the board.

Ms Valentine: Yes. The act allows parties to request different people to be there. If either the hospital or the patient requested the advocate to be there, that would certainly be possible. The clarification is the advocate would not formally be representing the patient at the review board. They would appear the same as a family member or friend could.

Mr Runciman: Right.

Mr Runciman: Did I understand you to say there are rights advisers now in every psychiatric facility in the province?

Ms Valentine: Yes, sir.

Mr Runciman: Is this a full-time position?

Ms Valentine: No. I did mention before you came in that in the four hospitals where the number of certificates are the highest the position is full-time. In other hospitals, it is a part-time position.

Mr Runciman: Are there 10 facilities in the province?

Ms Valentine: Yes.

Mr Runciman: Okay. That is a relief.

I am curious about your observations in respect to the advocates in the various hospitals with regard to some of the problems that have been brought to our attention about the right to refuse treatment. I am wondering, from your perspective, if you view that as something that government and members of the assembly should be concerned about.

Ms Valentine: My perspective is having difficulty understanding how it relates to the function of this committee as it is reviewing review boards.

Mr Runciman: I will explain it for you. The review board is dealing with the question of treatment and they have indicated us that this is one of the most serious concerns and the question of competence and so on. I am just asking you simply, as someone who is an advocate and is representing advocates in the hospitals, do you see this as a problem as well or do you have any views on it?

Ms Valentine: I have views on it. I am still not sure exactly what is the question you are asking me.

Again, I think if you will look at the statistics, you will see that a very small percentage of people exercise their right to even go to a review board. Of those who do, the vast majority of times the physician's decision is upheld.

I believe the issue of competent people having the right to refuse is extremely important. I do not think any of us who consider ourselves competent would like to be in a position of not being able to make our own decisions. I think the issues related to competency determination, the guidelines around competency, the manner in which physicians make competency determinations, etc., are extremely important issues. I have been saying that for some time now and have encouraged Mr Elston, shortly after assuming this job early in 1987, to have that issue looked at. As you know, there is now the Weisstub committee looking at those issues.

I think the other issue that relates to it is the issue of guardianship that is being looked at right now. If people are truly incompetent to be making decisions for themselves over a prolonged period, the issue of guardianship then comes into play, so that there is a guardian who can make those decisions.

Mr Runciman: How do advocates relate to the administration of the hospital? You are not answerable directly to the administration of a hospital.

Ms Valentine: No. That is correct. That has been an extremely important aspect of advocacy. Again, I did mention earlier, I report directly to the minister through the deputy.

Mr Runciman: What is the relationship? How does it work?

Ms Valentine: I have briefing meetings with the deputy and I also have ongoing administrative meetings with the assistant deputy.

Mr Runciman: No, I am not talking about you. I am talking about the individual advocates at, say, the Brockville Psychiatric Hospital.

Ms Valentine: The individual advocates report to me. I visit the hospitals. I conduct personal appraisals. Advocates are required to file reports. I receive information in various ways, through patients, through administration, through medical directors, most frequently when there is a concern.

Mr Runciman: Do you ever meet with officials of the Ontario Public Service Employees Union?

Ms Valentine: I have initiated contact with OPSEU. I have met with Mr Clancy and a couple of other members of OPSEU a couple of times in the last six or eight months, I would say. I have met more directly with the union representatives and, actually, union members at the Oak Ridge facility.

Mr Runciman: Do they have any concerns about the role of the advocate and how it is perhaps impacting on their membership in respect to some concerns? I know that I have had OPSEU officials complain to me about the activities of advocates, indicating they felt, rightly or wrongly—and this is their perspective anyway—they were creating some difficulties for them in carrying out their assigned duties.

Ms Valentine: I think the issues were quite well detailed in the evaluation of our program in the Manson report, the issues of concerns raised by union members, the issue of concerns raised by physicians, any number of people. Yes, certainly some members of the union do have concerns or have a specific concern at a certain time.

Again, I think one of the things in understanding advocacy is that advocates very much are advocating for patients the same as union members are advocating for members of their union. It is a very similar type of process almost, that is going on.

1450

Mr Runciman: I cannot recall too many specifics, but I know there have been a number of assault cases in the Brockville Psychiatric Hospital where staff have felt compelled now to lay charges against patients because they feel they themselves are working under very dangerous conditions. Because of the variety of protections and rights put in place for patients in recent years, it is sometimes difficult to restrain individual patients who may become quite violent.

If you have a female nurse trying to deal, even with an attendant assisting her, or a male nurse, for that matter, it can be a pretty tough job. I have heard the advocate's role in some of those situations being called into question.

Ms Valentine: Unfortunately, the advocate is usually not there at the time. I quite honestly wished, on many occasions, that he or she were. As we are all aware, there is always more than one side to a situation. I believe, if a patient is fully aware and fully competent and is assaultive, the members of the union or nonunion members have every right to pursue charges against the person if they so choose.

However, if a person is exhibiting symptoms in a psychotic state in a facility that he is there to be receiving treatment for, then I question charges being brought forward. I think that when they are, there have been situations of judges determining it was not appropriate to hear the case. In the United States there have certainly been some cases that have been written up.

Your inference basically was that patients' rights are making things more dangerous. I do not believe there has been anything in Ontario that has been done to look at that issue. I believe it is probably an issue that should be looked at. My knowledge of the United States, where follow-up studies have been done after patients' rights, the right to refuse treatment, etc, have been brought into place, follow-up statistics have shown there is no increase in dangerous behaviour. There is no increase of use of restraints—a number of things. I certainly have the information and would be pleased to provide the committee if it is relevant, Mr Chairman.

The Chairman: One of the questions I wanted to ask you was that very issue. In one of the wings in Penetanguishene Mental Health Centre there are 21 patients and there are 14 of them who refuse treatment. Does the advocate have any input with those residents?

Ms Valentine: If the patient asks to see the advocate, yes, the advocate would act on behalf of the patient. Again, I should perhaps clarify that the advocate role is to review for the person a variety of options. One of the options they review is having a patient look at the "best interest" perspective, the doctor's perspective on the issue, and what the potential consequences are of not taking treatment.

Penetanguishene is a particularly difficult situation to look at and it is probably even more difficult when you know that for some of the patients

who are there, there is not a specific treatment, or when it is known that things that were being touted a very few years ago, in the late 1970s, as being ideal treatment have now been shown to be ineffective and perhaps causing further harm to patients, in some cases, when compared with control studies.

Could I just add, Mr Chairman, that I think one of the issues with the particular ward you are referring to is the issue of whether patients are in fact competent or not. I did go up some time ago and I reviewed the situation with the medical director and the unit director. One of the things that had been stated for some time was that there were 20 competent refusing patients there. In fact, patients had not been reviewed for competency and there was an acknowledgement that likely three or four may in fact be competent refusing patients, but that issues such as the high demands on the physician—one physician at that facility with a tremendous number of demands on him—make it very difficult for timely, comprehensive determinations to be done.

The Chairman: At any time, have any of your staff, the two you have there, made any recommendations that they do have medical treatment?

Ms Valentine: It is not the role of the advocate to make recommendations that someone has or does not have medical treatment. The advocates respond to the patients' request for assistance. That is the way advocates get in touch with patients 95 per cent of the time, because the patient has asked to see them. The advocate's role is to advance the concerns of the patient and to bring the concerns to the attention of the appropriate person. The advocate is not in a decision-making position.

The Chairman: I think I asked if they ever recommended.

Ms Valentine: Are you asking me if the advocate has recommended to the physician or to the patient?

The Chairman: To the medical people, if they deem that patient perhaps should be taking treatment.

Ms Valentine: Again, I do not think a nonmedical person is the person to be recommending whether or not treatment is being taken, and certainly it would be outside of the role of the advocate to be making recommendations of that sort. I think there are probably times where the advocate has commented or expressed concern that perhaps they have known the patient when the patient was taking treatment and he might personally be in agreement on occasion with the medical team's perspective, but that is not his or her role.

The Chairman: I want to thank you for taking the time to come today and for putting forward your views on the advocate's position and some of the views you have with regards to the Review Board for Psychiatric Facilities. Thank you very much for attending.

Ms Valentine: Thank you.

ORGANIZATION

The Chairman: We have several agencies and boards we have not totally dealt with, which I discussed when we opened this afternoon's session. There is the Ontario Securities Commission, the Ontario Food Terminal Board, the Environmental Assessment Advisory Committee, the Royal Ontario Museum, the

Review Board for Psychiatric Facilities, the Stadium Corp of Ontario Ltd and the Ontario French Language Services Commission.

Marietta Roberts indicates that Brad Nixon wants to be here when we deal with the Ontario French Language Services Commission. I am wondering what other agencies we can deal with. Tomorrow we will be in camera in committee room 2. Our agenda calls for dealing with the Stadium Corp of Ontario Ltd and the Royal Ontario Museum. I would love to clear up some of these other ones we have on our list.

Miss Roberts: Perhaps, Mr Chairman, the clerk or the research officer could indicate to us about the food terminal. My last recollection of that is that we had some information back from them. Was there further information to come back to us? Had they given us the final answer?

The Chairman: Mrs Grier had been wanting to have some input into that. Mrs Marland had talked to Mrs Grier about it, but it has to do with unit C and it has to do with the vice-chairman being one of the people who is one of the owners there. We have some concern about that and I would strongly recommend that not happen. But anyhow, that is up to the committee.

Mrs Marland: Actually I have not spoken to Mrs Grier recently. I just know that when she was here, she substituted on the committee to deal with the Ontario Food Terminal because it is in her riding, and it just went to emphasize that there are some problems there and there has to be some house cleaning. I think it is up to the committee to give some leadership in our recommendations. It is not going to be an easy problem to resolve.

Mr Runciman: I thought we had dealt with the OSC the other day, in the sense that we are going to wait for the auditor, are we not? Is that not the conclusion we reached?

1500

The Chairman: Yes, but that was not going to be until November some time. That is my understanding.

Mr Runciman: When is Mr Nixon going to be available in respect to the Ontario French Language Services Commission?

The Chairman: I do not know. Will he be here tomorrow morning?

Miss Roberts: No. He is on holiday. He just came down because they were coming in and because it had been stated that there would be only the ROM and the stadium.

Mr Runciman: Don't they cease existence in November?

The Chairman: 18 November.

Mr Runciman: If we cannot deal with it now, we are not going to be able to deal with it prior to their disappearing.

The Chairman: They have come back and they have brought to our attention that they are recommending that an advisory council be set up. It is up to this committee, I guess, to make its recommendations, but I do not think we have many recommendations to make on it.

Mr Runciman: I disagree, Mr Chairman. I know that Mrs Marland and I certainly feel that something should be said about it. I guess I am a little concerned about waiting until the deadline date to say anything and I am just wondering how appropriate it is going to be. I can appreciate Mr Nixon's interest in this subject area, but at the same time I think that, unlike you, I would like to see us come out of the summer sessions with some conclusions and some recommendations in a timely fashion.

The Chairman: Okay. Shall we then leave it until 10 o'clock tomorrow morning to deal with some of these or should we perhaps have a motion to go in camera to deal with some of them?

Miss Roberts: Today?

The Chairman: Now. Is it the agreement of the committee that we go in camera to deal with some of these agencies, boards and commissions that we have reviewed?

Agreed to.

The committee continued in camera at 1501.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

ONTARIO HUMAN RIGHTS COMMISSION

MONDAY 2 OCTOBER 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Curling, Alvin (Scarborough North L) for Mr South

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Farnan

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

McGarva, Bernard, Legal Counsel; with Shibley, Righton and McCutcheon

Witness:

From Coopers and Lybrand Consulting Group:

Applin, Mike, Management Consultant

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Monday 2 October 1989

The committee met at 1405 in room 151.

ONTARIO HUMAN RIGHTS COMMISSION

The Chairman: I call the standing committee on government agencies to order. This week we are dealing mainly with the Ontario Human Rights Commission. However, before we get into that, there are a couple of housekeeping items I would like to tidy up first. One is with regard to the subcommittee. I would like to have a motion accepting the subcommittee's recommendation with regard to the legal counsel who is going to deal with this committee.

Mrs Marland: So moved.

The Chairman: So moved. Is that agreeable, that Bernie McGarva be the counsel?

Motion agreed to.

The Chairman: The other housekeeping item has to do with our agency reports that are yet to be finalized. Our research officer has these reports ready for us. I suggest that he distribute them to us. We will probably deal with it at a later date, but at least let him get the reports out so that we will have a chance to look at them before we have to deal with them.

Mr Ballinger: I have a question. I was away on the weekend. I guess I direct my question to the clerk. Especially for the elected people, none of us is at Queen's Park on Friday. To receive an agenda on a Friday is absolutely useless to me, because it does not allow me the opportunity to review it. I came in this morning and the agenda was delivered on Friday, but quite honestly it is not good enough. Was there a timing problem? Certainly, especially in the rural areas, we all go home on Thursdays and then we are not back in until Monday. Some of us come in late on Sunday evening, but for this to be delivered—this was delivered by hand to my office—on Friday was of absolutely no use to me whatsoever.

The Chairman: I sympathize with the concern you have raised. We had a subcommittee meeting on Monday. We interviewed three legal people and recommended Mr McGarva. The other item we dealt with was that the clerk brought us a list of all the people who wanted to make presentations and the list of personal presentations. We instructed him at that time to draw up an agenda, to try to fit in where possible where these people could come and make their presentation. I am sure that involved an awful lot of phone calls on his part to get these people lined up and changing them. Some could not meet one day and some could not meet on another. I think this is a situation that does not happen very often, but it was a situation where I feel perhaps the clerk's hands were tied. Does that pretty well explain the way it is?

Mr Ballinger: Because of the short period of time to prepare the material?

The Chairman: The short period of time when he got the instructions from the committee and the subcommittee. We had advertised and everything was on a short notice schedule. It was just one of those things that happened. Personally, I think the clerk did a good job to bring this schedule before us today to deal with it.

Mr Ballinger: Leave it to me to take issue with the chairman after such a fine statement as that.

The Chairman: It was really the clerk you were referring to, and I was defending our clerk, because I think he does a fine job.

Mr Ballinger: I did not notice that.

Mrs Marland: I wonder if we could deal with the subcommittee's meeting of 21 September, as there is not actually a report from that committee and, as a result of that meeting, I have some concerns.

The Chairman: Which meeting was that? That was the lunch meeting we had?

Mrs Marland: That is right. The last subcommittee meeting was last Monday and dealt, as I understood, only with the appointment of the solicitor or the counsel for the committee. I would like to deal with the subcommittee meeting of 21 September, where we discussed who might be scheduled to appear before this committee dealing with the subject of the Ontario Human Rights Commission in particular. That meeting was attended by yourself as chairman, by Mr Nixon as the government member, by Mr Breaugh as the New Democratic Party member and by myself as the Progressive Conservative member.

I placed before that subcommittee meeting five names of individuals I would like called to appear before these hearings. The names of the individuals that I placed were Raj Anand, the former chief commissioner; Mike Gage, the former executive director; Anne Molloy, the former director of legal services; Jim Stratton, the former director of compliance, and Tanya Wacyk, who is the director of policy and was formerly the special adviser to the chief commissioner.

When I placed those names before the subcommittee, Mr Nixon said he would only accept one of those names, that being Raj Anand. When I asked him if Mr Nixon was speaking on his own behalf or on behalf of the government, his response was that he was the whip of the committee for these hearings and that he was speaking on behalf of the government.

We are now here beginning the full hearings with a full membership of the committee, and the subcommittee could not reach an agreement on who should appear before the committee. I am quite sure the government does not want to cover up on the issue of the Ontario Human Rights Commission, because the former Minister of Citizenship, Gerry Phillips, said on any number of occasions, I think five or six occasions in the Legislature, in answer to my questions that he did want full and public hearings, that he was anxious that there be a thorough look at the specific allegations. He said that on 16 May. He said it should be done quickly and should be a matter of public record.

That being the case, there is also the fact that on 25 July the Legislature passed a motion placed by the former government House leader, Mr Conway, that this matter be referred to this committee and that this committee has the option, as it says in the closing of the resolution: "The assembly

doth command and compel the attendance before the said committee of such persons and the production of such papers and things as the committee may deem necessary for any of its proceedings and deliberations."

Further to that resolution, I would like to place the names I have just given, for those people to be requested to be scheduled to appear before this committee to deal with the matter of the Ontario Human Rights Commission, in particular because all of those individuals are identified in the Amin-Gordon report which we are going to discuss tomorrow morning.

Mr Breaugh: We did have one go at who might be called as additional witnesses. I left that meeting feeling that we would proceed this week with the public hearings, that those who had indicated they wanted to appear before the committee and make a presentation would get first dibs, so to speak, at making an appearance this week.

I was under the impression that we would, as a steering committee, meet again some time during the course of this week—Wednesday or Thursday would be fine by me—and make another attempt at seeing what additional witnesses would be called. If that is still the case, I am agreeable to proceed on that basis.

I am not sure that I have any additional names, but in the course of this week's hearings, for example, there may come to our attention some knowledge of other people who should be called. I would be quite prepared to proceed with the public hearings as scheduled this week, and to meet later in the week as a steering committee and see if we could come to an agreed upon set of names to recommend to the whole committee to call as additional witnesses.

If that is the understanding, I am prepared to set this argument aside for another day and let the steering committee do what it is supposed to do; that is, see if we can get three-party agreement on who will be called and to do that in the latter part of the week. I notice, according to the agenda so far, that we do have some time on Wednesday afternoon and on Friday, and we could do that. If that is the agreement, I am willing to proceed on that basis.

Mr J. B. Nixon: I am not going to respond to the allegations made by Mrs Marland, but I will say that I agree with Mr Breaugh's suggestion. I think we should probably reconvene as a subcommittee. Maybe Wednesday would be a good time so that we can at least give any other witnesses, if there are other witnesses to be called, some notice of our intention to require them to appear before us. Let's leave it to the subcommittee's discussion.

The Chairman: Is that agreeable, that it be left until we discuss it at a later date?

Mrs Marland: I would be happy for the subcommittee to meet again, but I think it would be an exercise in futility if Mr Nixon will not accept the same names that he refused to accept on 21 September. In the interests of the process, I would like to ask Mr Nixon if he has changed his mind on any of the names that he said he would not accept the committee calling on 21 September. If he has not changed his mind on any of those names, then there is no point in the subcommittee meeting again and going through the same futility.

Mr Breaugh: Hold on. It is not Brad Nixon's job to dictate who appears before the committee. The steering committee tries to strike a consensus, where we can find agreement among the three parties, as to who should be called. If we cannot strike a consensus, it will be this committee,

in open discussion, that says yes or no to any witnesses that are called. That is the way things are done here and I am assuming that that is the way they will continue to be done.

The Chairman: We have a time slot on Wednesday morning, which I think would be the appropriate time to use for the subcommittee to deal with any further names that may be put forward.

Mrs Marland: Mr Chairman, could you just tell me whether, if the subcommittee fails to reach a consensus, the committee as a whole will vote on my motion that I have just placed?

The Chairman: The subcommittee recommendation will come here and the committee can vote on what motion you—I am open to any motion from any member at any time. If you want to bring a motion at that time, whatever, I will be pleased to accept it.

Mr J. B. Nixon: Just so I am clear, the committee is suggesting that we get together at three o'clock on Wednesday?

The Chairman: Wednesday morning at 11:30.

Mr J. B. Nixon: That witness who was previously scheduled does not appear to be—

The Chairman: Maybe mine is not an up-to-date one.

Mr Breaugh: Twelve o'clock, then.

Mr J. B. Nixon: Twelve o'clock is fine.

The Chairman: Okay, fine.

Mrs Marland: Could I raise one other matter? Tomorrow morning we start at 10 o'clock with Mr Amin and Mr Gordon, and we have two hours, from 10 until noon. Then we start again at two with the Canadian Council for Racial Harmony. When I spoke to Harold, the clerk, on Friday, the Canadian Council was not confirmed. Is it now confirmed?

Clerk of the Committee: Yes, it is. They called back and said they would want to.

Mrs Marland: What I wanted to ask the committee is whether it would agree to sit until 12:30 tomorrow, which is an additional half hour, so that we at least spend the same amount of time on the most recent report as we are going to spend with Coopers and Lybrand's report this afternoon. I would move that as a motion, if you wish.

The Chairman: We will deal with that at 12 noon tomorrow, whether we extend the time or not. I think that would be the most appropriate time to bring that, to get the consensus of the committee. If we need the time, I am sure there would not be any member who would not support that type of move.

Mike Applin from Coopers and Lybrand Consulting Group is our delegate today, if he would take a seat. I understand you have a small presentation you would like to make.

Mr Applin: If I might.

The Chairman: Fine. You may proceed.

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COOPERS AND LYBRAND CONSULTING GROUP

Mr Applin: I thought it might be helpful if I began by telling the committee of Coopers and Lybrand's involvement with the Ontario Human Rights Commission. We were first asked to take a look at the Ontario Human Rights Commission in November 1985, in a very brief piece of work where we reviewed the backlog of cases and made a report to the then Deputy Minister of Labour, Mr Armstrong, which was passed on to the then minister, Mr Wrye. It provided a more detailed analysis of the problem of cases not being dealt with. The issue the minister was under some pressure about was one of backlog and the time it took to process cases.

That brief piece of work was followed by a request from Mr Armstrong to undertake an operational review in conjunction with some members of the staff of the ministry. That review culminated in a report in December 1985 which made some recommendations on organization and case processing methods.

We were then contacted in May 1987 to review and update the study we had conducted in 1985, but in this case the terms of reference of the study were broader than the ones that had taken place in November 1985 and included additional resources to Coopers and Lybrand, more specifically a Mr Robinson, who is a specialist in issues of this matter in other jurisdictions, particularly the United States, and a professor from British Columbia. So our report was one part of a sort of three-part review of the commission in the summer of 1987, culminating in a report which I think you all have a copy of, dated August 1987.

Mr J. B. Nixon: Mr Chairman, I have a question of clarification to you or to the clerk. Report 11 of this committee from the first session of the 33rd Parliament, the 1985-87 Parliament, which was distributed in the package of materials to us on Friday, is a review of the Ontario Human Rights Commission by this committee from two and a half years ago, as I understand it. On page 49 of that report it says:

"Your committee, therefore, recommends that: Within one year of the completion of the Ministry of Labour's review of the Ontario Human Rights Code and the operations of the Ontario Human Rights Commission, the standing committee on procedural affairs and agencies, boards and commissions, or any other committee authorized by the House, conduct a review of the Ontario Human Rights Commission."

What I want to find out is whether the review referred to by Mr Applin is the same review that is identified in this recommendation. Is that the Ministry of Labour's proposed review?

The Chairman: I do not know. Mike, would you have an idea? I do not think it is the same. I think this was the committee which we put in different reports—our committee now is the old procedural affairs committee—to review in a year's time, and I think that is where this came from, for the committee to review it. It has nothing to do with the report we had.

Mr J. B. Nixon: It does mention "...Within one year of the completion of the Ministry of Labour's review." I had always assumed that the Ministry of Labour's review was the review conducted by Coopers and Lybrand on behalf of the Ministry of Labour.

Interjection.

Mr J. B. Nixon: That is right. So in a sense, we are doing just what we had intended to do or the predecessor committee had intended to do. This standing agencies committee two years ago said that one year after Coopers and Lybrand does its report, we should review that report and review the Ontario Human Rights Commission. My understanding is correct?

The Chairman: That is my understanding.

Mr Breaugh: Mr Applin, you have been aware that for a number of years there have been difficulties at the Ontario Human Rights Commission. In another life, this committee reviewed it once and was made aware that there had been ongoing problems, some from an administrative point of view, some from an organizational point of view. But the basic problem, as I recall the review we did at that time, was that it is pretty tough to have an agency that is on the one hand supposed to enforce the Human Rights Code, and on the other hand is also supposed to kind of arbitrate, make people aware, promote policy. So one day they are in a position where they are hammering somebody over the head for not conforming and the next day they are supposed to be out there sweet-talking these folks into living up to some code.

In your study of it, my reading is that you identified that there is a basic conflict in the expectations that people put on the human rights commission. I would even go so far as to say they are being asked to do an impossible task; they cannot do both things.

Could you lead us down the road a bit on what your report did in those regards? I do not want to put words in your mouth, but that is basically, in a nutshell, what I find is wrong with the structure of the thing. It is being asked to do a job it cannot do. It is being asked to do at least two things that are in direct conflict with one another, and they never did sort out which was to be the priority and what job they were supposed to do.

Mr Applin: We identified several paradoxes that the human rights commission had to deal with and we made reference to that in our section (c) on pages 5 and 6 in our report.

The enforcement versus education--prevention role is one clear paradox: Being a policeman on the one hand and being an educator on the other. The advocacy versus enforcement--mediation role was another paradox the commission had to deal with. In our review we felt that not enough thought had been given to how you work those paradoxes through. We did not really address whether they were mutually exclusive roles, because there are other tribunals that have an enforcement and an education role or there are other organizational entities within our society that have an enforcement and an education role. The police is one example of that.

So we did not say outright that they were mutually exclusive roles and therefore should be cut adrift one from the other. We felt there had to be further policy thought at the commission and operating guidelines and procedures to help staff members of the commission to come to grips with those fundamental problems they have in discharging their responsibilities.

Mr Breaugh: One other observation I would make, as someone who has watched the commission struggle with a very difficult role: It almost seems to me that somebody set out, consciously or otherwise, to set up a commission which could not function; that it was in place so that the purpose of the

human rights commission in Ontario was to say, "We've got a human rights commission," and to point at some distinguished citizen and say, "See, that person chairs the human rights commission," and that is the end of it; that it was not ever really designed to work, that it was never really designed to perform any function other than to be there, so if somebody asked you a question: "Have you got a human rights commission in Ontario?" you could always say, "Oh, sure, we've got one of those and here is a very distinguished person who heads it up and aren't they wonderful?" But it was not set up to do a job.

It strikes me that if you sat down and designed something which could not possibly function, it would look roughly like the human rights commission has looked.

Mr Applin: That view was certainly held by several of the people we interviewed, that it was designed to put a lid on the issue and not to deal with the issue. I am certain that is not the case, when you look at the quality and the dedication of the human rights commission staff. Quite frankly, I have not seen many more commissions I have dealt with in my years of consulting to the Ontario government that have a more dedicated group of people concerned about the issues they were dealing with and trying to do a good job.

We were impressed when we met with supervisors and case workers. We were impressed with their dedication. We were impressed with the quality of the work they did under very difficult circumstances. The human rights commission is like a bucket: The better you do at it the more the bucket fills up, in a sense. It is somewhat analogous, I suspect, to the Employment Standards Act, in dealing with that piece of legislation. So they were faced and still are faced with a tremendously difficult task.

1430

One of the issues that our second study was intended to address was whether or not you can fundamentally deal with issues of discrimination on a case-by-case method. That is really just trying to bail out the sea with a thimble: You really cannot do anything about fundamental causes of discrimination unless you attack it on a systemic basis. Certainly Mr—I forget his name, Robertson or Robinson, I am sorry, I think it is Robertson—was very clear on that from his experience in the United States. That was one of the reasons why his component of the study was added to what was essentially a managerial component done by Coopers and Lybrand.

Mr Breaugh: You have confirmed my worst fears, in a sense. I know every body is dedicated, I know everybody is wonderful, competent, real good people. That is not the question. The question is: Does the human rights commission work? The answer to that is no, and it never has.

Most of us who are members here, who have been around for any length of time, know that somebody comes into your office and says, "I think somebody did something nasty to me," and you call and the response is, "Well, we really can't do anything about that." If I called the Durham regional police force because somebody complained of speeding and they said, "Well, we don't have any speed traps, we don't have any officers and patrol cars, we don't know how to handle speeding," I would be a little upset. Yet when I call the human rights commission about discrimination in housing and we tell them the story that somebody went in to get an apartment, and for him, because of the colour of his skin, the apartment was rented; but when we called back five minutes

later, it is still open for business. You tell the human rights commission all of that, and they say, "Well, there's not much we can do about that kind of stuff, is there?" It is true, there is not.

I do not think the problem is desire or competency or fine people or anything like that. It is a process that was designed not to work and it does not work. You had a shot at trying to sort out what you could do to make it work. I am a little surprised that we have not had much of an initiative to pursue that.

Mr Applin: An initiative on behalf of the commission?

Mr Breaugh: The commission, the government, anybody.

Mr Applin: There were attempts made, I believe, and I am not clear on what happened after this report, but certainly I was asked to assist in the preparation of an MB-20, a submission to Management Board for additional resources, following the publication of this report. The content of that request for additional resources was based very much on what we were recommending in this report.

I took that to be an attempt to do something about the resource issue that we were addressing, and an attempt to do something about the structural issue that we addressed here with regard to the need for a group to deal with systemic discrimination, as well as a group to improve the handling of cases on an individual basis and also a group to deal with education.

If you do not separate out the roles that you play, you get that confusion that you mentioned, Mr Breaugh. If you do not separate out the roles that you wish to play and resource them adequately, you will not address the multiple problems that face the human rights commission in trying to discharge a very complex mandate.

Mr Breaugh: In conclusion, my problem is not your report. Yours is, again, a fine, dedicated, competent report. But it did not exactly reveal state secrets here. These are all things that anybody who has been an observer has known for some time. You maybe were the first outside group that came in and wrote it up, but I have not seen anything happen since.

This is not a particular government's fault; I would grant you that. Governments of two political parties have been around and associated with the human rights commission. I did not see anybody make a quick move to implement your report, and your report was not recommending any top secret, hot stuff; it was just what I would classify as being pretty common knowledge about how the human rights commission functions and what its difficulties were.

In conclusion, my problem is not your report and it is not the human rights commission. It is that governments in Canada perhaps were not ready to do some of the things they wanted to talk about but did not really want to implement. They wanted to have a showbiz operation, but they really did not want that operation to function as my expectation of a human rights commission would function. I do not think that is unfair.

Mr J. B. Nixon: Mr Applin, when was your report prepared?

Mr Applin: The 1987 report?

Mr J. B. Nixon: Yes.

Mr Applin: It was prepared during the month of August 1987. We started the study in May or June, I believe.

Mr J. B. Nixon: It was submitted to the then Minister of Citizenship or Minister of Labour—

Mr Applin: It was submitted to the deputy of the Ministry of Labour, Glenn Thompson in August 1987.

Mr J. B. Nixon: Over two years ago.

Mr Applin: That is correct.

Mr J. B. Nixon: Have you been retained by the ministry in the past two years to review the implementation of your report?

Mr Applin: No. I was asked to assist in the preparation of the MB-20 and that took me through until—I have correspondence on file dating in May 1988.

Mr J. B. Nixon: Have you reviewed the most recent annual report of the Ontario Human Rights Commission?

Mr Applin: That would be published when?

Mr J. B. Nixon: I believe it is 2 June.

Mr Applin: For the calendar year 1988? No, I have not, Mr Nixon.

Mr J. B. Nixon: So if many of your recommendations have been implemented by the human rights commission, you might not be aware of that.

Mr Applin: I certainly would not be aware of all the recommendations that have been implemented by—

Mr J. B. Nixon: I am sure Mr Breaugh has not read the annual report either. But I will tell you that, for instance, many of the recommendations you made—I do not say this with any disrespect; I say it with a great deal of respect to you, sir—in your report have been implemented, all the way from things like ensuring the executive—

Mr Breaugh: Brad, you are doing a dandy job over there. We all know it. That is why we are in session right now. It is so good that you had to strike a committee and go and investigate it one more time. That is going to mean there are no qualms on the government side—

Mr J. B. Nixon: I just want to make sure that you understand the facts, Michael, instead of misrepresenting the situation.

Mr Breaugh: Thank you. I really needed a lecture from you.

Mr J. B. Nixon: Let me point out to you that a couple of things have occurred. One, the executive director no longer reports to the deputy minister but reports directly to the chairman of the commission. That was a very important issue.

Mr Breaugh: You have done a wonderful job, Brad; that is why we are here.

Mr J. B. Nixon: Let me point out that there has also been the establishment of a policy unit, something which you were quite strong on and felt was quite important, to have overall policy guidelines.

Mr Breaugh: That obviously did it.

Mr J. B. Nixon: Well, Michael, I just want the record to show that not only are people nice and wonderful, but there are people out there working very hard for the cause of human rights, not only in the commission but throughout government, and I do not mean—

Mr Breaugh: That is why we are here, Brad.

Mr J. B. Nixon: We are here to look at some very real problems, but not the problems you have identified. Let me put it that way.

Mr Breaugh: Oh, your problems. Okay.

Mr J. B. Nixon: Well, problems identified by people in the larger community. I do not want to get into a debate with you.

The Chairman: Just ignore the interjections. Direct your remarks to Mr Applin.

Mr Breaugh: Hey, no coaching.

Mr J. B. Nixon: Mr Applin, in your report, you identify on page 6, for instance, some of the potential conflicting roles that I assume any human rights commission is going to face. For instance, the tension between being an enforcer on the one hand, and on the other hand having an education and prevention role. That is one Mr Breaugh has alluded to.

You also point out the tension between having an advocacy role and an enforcement or mediation role. You have suggested that perhaps that tension is inherent in any human rights commission. Can you imagine a human rights commission without some of those functions?

Mr Applin: I cannot imagine a human rights commission that does not have the tension between enforcement on the one hand and education and prevention on the other hand. There are models of administrative tribunals that avoid the tension between advocacy and enforcement. One can think of the Workers' Compensation Appeals Tribunal, which deliberately stays away from that, as one model. Harking back to that same tribunal, they have very deliberately separated investigation from hearing, that those who do investigation are not the same people who sit on panels and hear.

But no two tribunals can be compared as exact matches because they are not analogous. In a way, the analogy to the WCAT is really the board of inquiry in this instance, and the human rights commission is more like the Workers' Compensation Board dealing with the first case as it comes. So I do not think you can get away, given the scope of what the human rights commission in Ontario is intended to do, from the second one either, because it is both dealing with cases and then sitting in judgement on cases. It also has this mediation responsibility, as well.

Mr J. B. Nixon: Can you elaborate on your suggestion that by establishing a policy unit which would establish policy and operational guidelines for the human rights commission, how it would attempt to mitigate

some of those tensions that exist between the different departments?

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Mr Applin: I believe the attention given to issues of policy is paramount if you are going to deal with these fundamental conflicts. You cannot have people doing it on the fly. You cannot have people who have half a mind on managing the operation of the business, spending the 15 per cent of their time when they are not doing everything else dealing with matters of fundamental importance such as policy and policy development.

I think you need people who specialize in that issue, to focus on the questions, to research what is going on in other jurisdictions, to understand how what this commission is doing stacks up against some principles of natural law and justice and then develop policy which is appropriate given the environment in which this commission operates.

Our sense was that that was being done a bit on the fly, and of course with the exigencies of the case load they had to manage, it got squeezed out too often. So we felt that you had to have concentrated resources dealing with the question of policy and policy development.

Mr J. B. Nixon: I am interested in another observation of yours, that the legal services capacity of the human rights commission should be independent from its traditional relationship with the Attorney General. Can you elaborate on why you think that is important?

Mr Applin: We were asked to address that issue because it had been a point of some contention for a period of time before we got involved. Really, it was a subset of the broader issue of the independence of the commission. It was really a manifestation of the fact that the commission was not independent of the bureaucracy and, in the mind of many commissioners, should be independent of the bureaucracy.

Mr J. B. Nixon: Were you speaking of more than the employer-employee relationship that exists between most lawyers in the civil service and the Attorney General?

Mr Applin: No, I was not speaking further and beyond that. It was a subset, as I say. Let me be plainer. There was a proposition on the table from some people we interviewed as part of this process that this commission had to be thoroughly independent, à la the Ombudsman. That debate raged backward and forward as part of this process. We were not persuaded that it needed to be that independent in order to be more independent from the Ministry of Labour, in terms of exercising its own responsibilities and making its own decisions.

The commission existed in a strange kind of relationship, caught between the Deputy Minister of Labour on the one hand and the chairman of the commission on the other. It was a kind of weird limbo land. In our opinion, you did not have to change the fundamental statute or reporting relationship of the commission to make it more of an independent, autonomous, free-standing unit. It could be done within the essential structure that was in place, and we made that point to the commission. Some commission members disagreed quite violently with us on that view, but that was our opinion.

Mr Philip: Can I ask a supplementary?

Mr J. B. Nixon: Sure.

Mr Philip: It has always been my view that multiplying ombudsmen simply creates confusion in the minds of the clients or potential clients. In some countries, in even the father-mother, if you want to call it that, of ombudsmen, Sweden, human rights is considered the most important role for the chief Ombudsman of the country.

Why would you not scrap this elaborate mechanism that is being set up and simply make it a branch of the Ombudsman of Ontario, a different department, if you want, so that if someone came to the Ombudsman with a problem, it could well cover human rights, it could well cover employment discrimination of various kinds within the public service. Why have a duplication of the Office of the Ombudsman just a few blocks over, in a different form? Why not just make it an office of the Ombudsman?

Mr Applin: It would be the easy way out to say that our terms of reference did not include that, and they did not. But having said that, there was not a great deal of appetite for duplicating another Ombudsman at the time. Maybe there is not a great deal of appetite for it now. There was some concern in the government at that stage about accountability and ensuring that there were proper mechanisms to make any agency, board or commission of this government accountable to elected members. So there was some concern that creating another Ombudsman would not do that.

Mr Philip: I do not think my suggestion was to create another Ombudsman. My suggestion was, why not have the Ontario Human Rights Commission as a division of the Office of the Ombudsman?

The Chairman: If you want to talk about the Ombudsman, I do not think that is a supplementary to the question he was asking, in all fairness. You are on next and perhaps you could put those questions when Mr Nixon finishes.

Mr Philip: It was a supplementary because it was the various models that could be taken to separate the direct line of government from the human rights commission, which was one of the things he deals with on pages 11 and 6 of this report.

Mr Applin: I would just like to complete this. Otherwise, I will lose my train of thought. One of the characteristics of human rights and how they are dealt with in this government is the great number of agencies or points in the government where some responsibility for human rights exists. Our first report in 1985—and I wish I had brought my copy with me—produced a small matrix which showed the various levels of activity in the various agencies involved.

Consider that there is the cabinet committee on race relations, a race relations commission, the human rights commission and the Pay Equity Commission of Ontario, and those are just off the top of my head. There are other agencies or entities around this government that have some responsibility for human rights, depending on how broadly you define that.

Until that complex web of responsibilities and accountabilities is sorted out, I do not think you gain anything by putting this human rights commission into the Office of the Ombudsman. I think it needs a more fundamental streamlining of who is responsible for what in the whole area of rights.

Of course at the same time as we were debating this issue, I believe,

the pay equity legislation was going through, and then employment equity was another issue that was being debated. Quite frankly, it was quite unclear in a policy sense where responsibility should lie. In our view, it was not considered something that was clarified by attaching this commission to the Ombudsman.

Mr J. B. Nixon: One of the many things you talk about in your report is the role of the commissioners and you frequently suggest that they should be taking the view that they are a board of directors and should not be involved in the day-to-day issues of case management or decisions surrounding those cases.

First, how extensive was the practice of commissioners involving themselves in day-to-day case management in the past? Second, can you elaborate on the concept of the commissioners acting as a board of directors rather than as managers?

Mr Applin: The model that we assumed or implied in our discussion was that the commissioners should be responsible for policy development and executive management direction and that the staff should discharge the policy that the commissioners should enunciate. The commissioners spent most of the time that they were acting as commissioners in case-by-case review.

They would be faced with piles of files to deal with when they came to meet as commissioners. Their time on policy development was minuscule. Furthermore, they were relying on staff for a lot of policy and case-related advice because they were essentially inundated by the workload. As a result, they also were bottlenecks in the process.

Our view was that routine cases, if there is such a thing as a routine case, could be dealt with by staff in many instances and that only exceptions should go to the commission. I am on thin ground here; I believe that would require legislative amendment. At any rate, that would speed up case processing and also leave more time for the commission to deal with more important issues of policy. In a sense, the commission was a bit like a rudderless ship in not having that policy direction given by the commission.

Maybe the analogy of a board of directors is a bit too private-sectorish and maybe we could have chosen a more appropriate analogy, given that we are dealing with a public sector commission.

Mr Breaugh: A central committee.

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Mr Applin: We were trying to get across a point, that they were buried in the morass of the detail and were not giving direction to the ship.

Mr J. B. Nixon: You have emphasized the point that an examination of systemic discrimination should be a top priority for the commission.

Mr Applin: Yes.

Mr J. B. Nixon: Do you have any suggestions on how a human rights commission would go out and develop policy on systemic discrimination?

Mr Applin: I am on extremely shaky ground here because I am not an expert in this area. Mr Robertson was retained because he is an expert on how

you go about doing that, having done it for the Equal Employment Opportunity Commission in the United States. By virtue of doing the study, I picked up stuff, but I am not an expert. Quite frankly, I would feel uncomfortable answering that question, because I really do not know.

Mr J. B. Nixon: Can you do something for me then, and other members if they are interested? I do not think we have the benefit of Mr Robertson's paper. Was it a separate paper or just what is enclosed in this report?

Mr Applin: Mr Robertson's report, as I understand it, was a separate one to this.

Mr J. B. Nixon: Could you forward a copy through the clerk? I would very much appreciate that.

The Chairman: Okay.

Mr J. B. Nixon: I have one more question. You talk about relations between the employees in the regional offices of the human rights commission and the commission itself, and you talk about a blockage existing between those two groups, the regional staff and the commission. At that time, the executive director was reporting to the deputy minister and not the commission or the chairman.

In addition to requiring or proposing that the executive director report directly to the chairman of the commission and not to the deputy minister, were there other initiatives—and I am sure I cannot recall them—which you suggested to encourage the interaction and communication between the regional staff and the commission?

Mr Applin: There are several things that we commented on. By the way, I just want to clarify one point. The executive director really faced two ways: he faced towards the deputy on the one hand and towards the chief commissioner on the other. The deputy was there longer than the chief commissioner was.

There were several seemingly mundane issues. The offices were separate; the commissioner was up in this complex across the street here and the commission was down at 400 University Avenue. It did not seem sensible to us to have the head of the organization physically separate from the body of the organization. That is just one small illustration of how communications did not work and how they saw themselves separate from the commission.

Mr J. B. Nixon: And it supports the perception that Mr Breagh alluded to that exists in some people's minds, and it probably had some basis in fact: that the whole issue of human rights was being papered over by appointing a chairman and putting him or her in one office and sending people in the field out in a different office, and the two never communicated. That would certainly support a thesis that there may not have been a serious interest in human rights. Am I wrong in saying that?

Mr Applin: Somebody looking from outside would probably draw that conclusion. In fact, many of those who staffed the commission did not really understand what the commission, made up of commissioners, did. So that certainly would have led to that view, based on our analysis, yes.

Mr J. B. Nixon: I am sorry I interrupted you. You were going through a couple of other incidences of the separation.

Mr Applin: You were asking what other observations we made that lead us to believe communications were not as good as they could be. Let me talk about an issue of organization culture. I tread carefully because it is not a phrase that anyone agrees on a definition of. But when I say culture, I am really talking about a system of values and styles that bind an organization together toward a common purpose.

One analyses organization culture by looking at several superficial manifestations of it, one of which is whether or not communication works well within an organization. In our observation, the communication that ran from the management team to the rest of the commission was not as good as it should have been. That was one reason why there was a them-and-us attitude within the commission when we looked at it.

Mr J. B. Nixon: Thank you very much.

The Chairman: Thank you. I have a list here of three: Mr Philip, Mrs Marland and Mr Curling. I would like to ask a question just before Mr Philip is on.

Report number 11 of the standing committee on procedural affairs and agencies, boards and commissions indicated that there were problems within the commission, that they were experiencing problems and it was taking more than the six months to resolve them. When you did your report, did you find that that had perhaps changed? Was it better or was it worse when you did your report?

Mr Applin: I am not sure what report number 11 is.

The Chairman: The standing committee on procedural affairs did a report on the human rights commission back in 1986. This report was done and there were recommendations in that report that they were experiencing problems in the commission and that it was taking several months, six months or longer, to resolve some of the case load. My question was, when you did your report, did you observe whether that time had increased or decreased? Did it get worse?

Mr Applin: Let me begin by saying some things about our case management and tracking cases. It is perhaps one of the more difficult things to get agreement on because there are few definitions about what is a case and what is a backlogged case. One of the problems we had in our 1985 study was just gaining agreement on those basic definitions and then collecting information numbers that everyone could agree to.

We again looked at case processing in 1987. In our appendix 5 to the 1987 report, we give a statistical review of the commission case load at that time. That would have been done in the summer of 1987. You get a sense in table 1 of appendix 5 of their case disposition rate. One of the things that you notice in that analysis is that the number of cases closed had in fact increased quite considerably, but the number of cases received had increased quite considerably as well. So they are really fighting an increase in volume. The growth increased by something like 148 per cent from 1981-82 to 1986-87 when we were looking at it.

At the same time, their complement of case officers had only grown about 81 per cent. As a result of increasing case load, the backlog, which we defined as any case over six months old, grew from 428 to 1,000 in 1987, an increase of 154 per cent. So despite the fact that a lot of resources had been thrown at the problem after our 1985 report, in other words during 1986, and

despite the fact that really a kind of an emergency management team under Miss Jean Read of the Ministry of Labour have been put in place, the backlog had continued to grow.

The Chairman: Would you anticipate that it is still growing?

Mr Applin: I do not know. I have not looked at the case load.

Mr Philip: And it continued to grow, if I understand you correctly, because the number of cases coming in was getting larger. Did you do any study, over a period of time, as to whether or not the number of cases coming in relate to the economic conditions of the province at the time?

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Mr Applin: No, we did not look at whether that variable had an impact. Certainly between 1981 and 1987 when we were looking at it, there had been amendments to the code which had broadened the grounds for discrimination, and that had increased the number of cases. The commission staff, although not able to describe it in a quantitative sense, believed that the complexity of cases was growing as well. In other words, they were getting more cases and the cases they were getting were more difficult.

Mr Philip: Would you agree that the problems of a case backlog or specifically of individual cases, the length of time for case A, B or C, may not necessarily be directly related to the work of the commission or its officers but may be related to the problem of getting responses from the alleged offending party or the party that is being questioned about the possibility of discrimination?

Mr Applin: That is often the case from my understanding from talking to case officers.

Mr Philip: Is it your feeling that these offending parties would be able to be identified if adequate research was done? Did the commission at any time do that kind of research, as has been done by Dr Hill and his staff in the Ombudsman's office, who can identify those ministries which may cause delays in their processing of complaints against a particular ministry?

Mr Applin: I cannot answer that in particular, but I can say that the commission was aware that there were certain categories of complaint that were more difficult to deal with, and that they had identified those categories of complaint and were trying to respond promptly with a priority case handling process to deal with them.

The issue Mr Breaugh mentioned, of discrimination in housing, is a particularly difficult one to deal with because rental properties go very quickly. Before you can act on it the traces have been covered. The commission, as I understand it, did and may still have a process of dealing with those more promptly than if the case were not a housing-related discrimination case.

Mr Philip: Would you not agree that, at least with some of the parties the commission is dealing with, it would be possible for them to identify whether or not company X is slower in responding to inquiries than company B, and whether there is any category of parties, whether hospitals are slower as a group to respond than manufacturing companies or whether small manufacturers are slower, so that some work could actually be done in trying

to deal with the problem out there rather than the problem inside in terms of processing?

Mr Applin: The commission collects a lot of information on its cases and manages that information relatively well. In answer to your question, yes, there is no reason why they should not do that. Whether they do that or not I am not able to answer.

Mr Philip: You were not aware of whether they were doing that when you graphed this appendix and did this work on case backlog or profile backlog in 1987 then.

Mr Applin: Correct. I would just like to make one other comment that I did not make. On table 2 in our exhibit, appendix 5, you can note that although the case load carried forward is growing, it is not growing at the same rate as it was growing at. To that extent they were beginning to get hold of that case load.

Mr Philip: I would like to discuss the whole problem of systemic discrimination. You point out in several places, particularly on page 9, that the current reporting relationship of the commission to the Minister of Labour is seen by commissioners and staff as limiting and undermining the ability of the commission to initiate systemic complaints against any offending ministries or agencies of the government.

My question to you is, is it your view in retrospect now that that has changed? You made a couple of specific recommendations. What you are really saying, then, is that you have to be a little bit more removed from a ministry, in this case the Ministry of Labour, in order to be independent in your systemic analysis of all ministries. Is that a fair assumption as to what you are saying?

Mr Applin: That was very much the case put forward by members of the commission and several members of the staff of the commission, that you have to be at arm's length from the government in order to be able to pursue the matter. But there were also examples put forward of other agencies that sometimes have to take the government, as a client, to task, and to do so without a problem. Within the Ministry of Labour, the occupational health and safety division occasionally has to take the government to task, and does so. There are arguments made on both sides of that.

Mr Philip: Did you look at models in other provinces and other jurisdictions? I take it that it is your position, not just the commissioners' position. You are saying there are pros and cons, but I take it that it is your position there should be more of a hands-removed relationship with the Ministry of Labour or with any other ministry of government.

Mr Applin: It was our position when we were defending this report that the commission could be more at arm's length, removed from the Ministry of Labour, within the current statutory arrangement and that it just was not exercising the independence that was there for it to exercise.

Mr Philip: Is it your feeling there has been any change since that report?

Mr Applin: To be perfectly honest, I have not been close enough to make comment on that.

Mr Philip: There is one area I really have trouble with. I have

trouble with your model and I have trouble with the present system. Maybe you can convince me by fleshing out your arguments a little bit more, but I really do not believe that you can be policeman and judge at the same time. Simply having a different line relationship on your graph does not change the perception. The public still says, "I went to agency X and it is agency X that is both policing and judging."

Is it not fair to say that you have to come up with a model that basically says: "Yes, we can do both but there are some changes we have to make in terms of roles. You cannot have the enforcer also making judgements on the cases and clients he is enforcing and so forth"? Do you really believe you can separate or have within the same agency, within the same tribunal, if you like, both policing and enforcing? How objective can it become or be seen to be?

Mr Applin: When that issue was discussed both in our interviews and also in the discussions we had with the Ministry of Labour as we were preparing reports, the problem we had was drawing the strict analogy between this commission and other administrative tribunals around the province. I am no expert on administrative law, but I understand that there really is not an analogy to the Ontario Human Rights Commission. As I say, in some cases, if you take workers' compensation as another system, it is really a rolling together of the board and the appeals tribunal. In that instance, they did do both in a sense, but the policing role is not there in that particular system.

Again, our terms of reference did not permit us an extensive investigation into that issue—we were essentially asked to repeat a management review that was done two years previously—but certainly in our review the theme was to try, within the bounds of the statute as it is now defined, to separate those roles more clearly so you did not run into those conflicts I mentioned on page 6 of the report, and to somehow structure the commission so that those two activities would go on simultaneously without putting individuals in a position of conflict.

Mr Philip: Is it possible in your opinion that maybe there should be two different, separate bodies, one that does the judicial role and one that does the enforcing role.

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Mr Applin: In a sense there are now, in the sense that you go to a board of inquiry, which is a separate judicial entity from the commission, if you are not satisfied with what the commission has done for you. That is there now. To further segment it again, I quite frankly have not turned my mind to thinking about that and it is not an issue I want to comment on without some thought. It was not part of our terms of reference to look at it in much detail. I think it is something that has to be considered, with more than just an off-the-cuff response to a question, without much thought.

Mr Philip: I guess my concern is not only whether justice is being done but also whether it is perceived to be done. I really do not know whether a person who is making a complaint or the recipient of a complaint sees the distinction if you happen to draw a couple of lines two or three inches over and say, "Well, but it is not the same people." I really wonder whether they believe it is not the same people. They are in the office next door. I am sure there is a staff transfer from time to time or there is movement of staff back and forth into the different little boxes you have drawn.

Mr Applin: I think yours is a very valid point, but I think it also

is something that should be reviewed by people who are experts in administrative law. I think there are some basic principles of natural justice that have to be considered before you can answer that question. We did not consider those basic principles.

Mr Philip: As my colleague Mr Ballinger would tell you, I invariably get down to the same questions, no matter what group appears before me, but have you examined the internal audits of the Ontario Human Rights Commission? Were you satisfied with the quality of those audits and are the taxpayers receiving value for money, if I may use the same old phrase over and over again?

Mr Applin: Are you referring to the audit that was done most recently by the director of the internal audit department of the ministry.

Mr Philip: No, I talking about the general internal audit system that was in place at the time at which you did your study. Did you examine the internal audits? Were they adequate internal audits?

Mr J. B. Nixon: He is chairman of the standing committee on public accounts.

Mr Applin: That helps me.

I believe the audits that were done on the Ontario Human Rights Commission were done by the director of internal audit for the Ministry of Labour. I do not believe they had their own internal audit group, at least in 1985. As part of our background documentation review, we looked at those internal audit reports in 1985. I do not recall anything that was unusual in those results.

Mr Philip: Were they value-for-money audits or simply accounting audits?

Mr Applin: I cannot answer that question because I do not recall. But I do not believe we looked at any internal audit reports when we did the 1987 report, primarily because we were focused on the issues that were in our terms of reference.

Mr Philip: Assuming that we all believe that human rights is an important issue and assuming that we believe tax money spent on this should get as much of a bang for the buck as possible and lessen the need for a human rights commission, I guess you are not in a position to say whether we are getting, or at the time you did the audit were getting the best value for our money that was being spent at that time.

Mr Applin: No, I am not.

Mr Philip: Other than to read through the lines saying that the roles were fuzzy in different departments and therefore probably it would be very difficult to say what exactly they were doing at times.

Mr Applin: I do not think there is any doubt that the staff of the commission were clear about what they were trying to do.

Mr Philip: And were energetic, dedicated and working at the time and so forth.

Mr Applin: All those good words.

Our comments on the need for more public education, more promotion of some of the activities of the commission, were there primarily because we felt that the aims of the act could be achieved by undertaking some of those activities more fully than they were being undertaken at the time we did the review.

Mr Philip: One last question: I have a right to say this without bias because I do have a couple of degrees in education, but I am somewhat cynical about how people throw around the words of how we must do more education.

Mr Ballinger: I thought you were a lawyer.

Mr Philip: So do a lot of people. I have been called worse things, a small businessman as well. That is even worse sometimes.

One of things that strikes me is that behavioural change is not always brought about by, in quotes, education. If you are spending a buck, you have to look and distinguish between education, propaganda, motivation, whatever. Do you feel that the human rights commission has done that?

Assuming that people discriminating against one another on the basis of whatever the five or six categories are is wrong or is unacceptable, do you believe that the Ontario Human Rights Commission has really done adequate study as to where it, the government or the taxpayer should be spending money to get the biggest bang in behavioural change to lessen the negative behaviour that creates the need for a human rights commission in the first place, other than just giving lipservice to education, which I am not convinced in many cases actually brings about any kind of behavioural change; sometimes it reinforces it?

We have seen that in drug abuse programs, that actually some money spent on certain types of drug abuse programs in the name of education increases curiosity about drugs and ends up with more people experimenting. I guess I am asking, is there adequate research as to what they are doing in terms of education, propaganda or whatever else is necessary to bring about change?

Mr Applin: That was a topic Peter Robertson dealt with in his report in some depth. He has some very interesting information, data studies from other jurisdictions, which address that question. He was the expert on what you need to spend your effort on as much as your money on to make sure that you are effectively combatting discrimination.

His view, which is expressed in this report as well, is that case-by-case handling, to the extent that this commission is doing it, is not the most appropriate expenditure of effort and money to deal with the basic fundamental questions of discrimination. That was why the whole question of a systemic approach was dealt with and that was why the whole question of better public education was dealt with. I honestly think your question can be far better answered by a review of his report than my dim recollection of it.

The Chairman: I have as the next two Mrs Marland and Mr Curling. Before I go to Mrs Marland, it is coming to my attention more all the time that with these two reports—Mr Nixon earlier on said there have been several changes, that a lot of things have probably taken place there. I am wondering, and I am looking for your direction, committee, if we should not be requesting from the ministry if it has anything on some of the changes that have been made from these two reports that would give us a little insight into whether

the case load is down or whether there are some statistics that show there have been some changes. Maybe the commission might have something that would be helpful to us. I think it would be good if the committee could get something we could look at and say this has improved or this has not.

Mr Applin: Appendix 4 of our report contains a spread-sheet analysis of responses from our 1985 study. In 1985, post the work that we did, the commission set up a committee called the planning committee on the operational review, or PCOR for short, under the chairmanship of Lou Ronson, who I think was the vice-chairman of the commission in those days. He implemented several of the changes to the extent that he was able to within the resource constraints. We assessed those and analysed them in appendix 4. What I am not aware of is whether there has been a similar assessment of the response to this report.

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The Chairman: Perhaps, if the committee would agree, we could have our clerk contact the ministry and the human rights commission and see if they have any information that would be useful for the committee. Do you think that would be a reasonable request?

Mr Philip: Was it not our intention to call before us the Deputy Minister of Labour at some point in time, anyway?

The Chairman: Yes, but we are going to deal all week with items that are going to be raised that perhaps have been addressed.

Mr J. B. Nixon: I agree with the idea of getting the deputy and the present chairman before us. I did not know whether we were going to discuss that now or leave that to the subcommittee meeting on Wednesday. I support the idea of getting Ms Frazee and the deputy minister before us.

The Chairman: My reason for raising it was that I see what is going on, and I thought I should have something here that I could look at and say, "Yes, that has been addressed."

Mr J. B. Nixon: That things are better.

The Chairman: That is right.

Mrs Marland: With respect, the Amin-Gordon report does have a case load analysis. On appendix 3A of the Amin-Gordon report, there are some facts and figures there that do answer what the current case load is and the backlog.

The Chairman: Yes, but I would like to know from the ministry's point of view whether that has improved. We have nothing here to say that it has or has not. If they have it, then let's have it. If they haven't, fine. Would that be a reasonable request, to have the clerk phone them and try to get the information?

Mr Philip: I would imagine that they are putting together a lot of this stuff anyway for their eventual appearance. If they have it in advance and they do not feel that they are pre-empting themselves by supplying it, let's have it. I am not convinced that a five- or six-sentence update, without having the person here to answer questions as to what those five or six sentences mean, does all that much for us. But if we have it, so much the better.

The Chairman: That is what I am looking at.

Miss Roberts: I would suggest that if the clerk asked for something specific such as the appendix our witness today spoke about, I think that a continuation of that, just to see, would be excellent. If they have that available, the sooner the better.

The Chairman: This page you were looking at with regard to the consultant recommendations, phase 1 and that—at the end, what they had done—it would be nice to have that.

Mr Curling: Just for clarification on one of the questions I had, Mr Nixon raised the point that the annual report of the commission had come out. Some of these things have been taken into consideration already and have been implemented, but I am hearing that there is an appendix you want to attach so that we know what has been done.

Regarding the appendix and looking at the annual report, would we not be better off having the annual report than just having the appendix, which again, is the summarization of what is happening? I would like to see, if we are going to assess that, that we have the entire thing to be able to ask relevant questions, up-to-date questions, as a matter of fact.

The Chairman: I am just looking for more information and I think it would be more reasonable.

Mrs Marland: Just on Mr Curling's point, which I think is very valid, we have the Amin-Gordon report and have had it from the beginning of August. We had some of their appendices to the report, but we do not have the benefit of the reports and information given to them in order for them to write this report. I think it would be to our advantage to have that. I realize we cannot have it before we hear from them tomorrow, but at least it would save us some of the questions we might otherwise take up time asking tomorrow, so if the clerk could get the submissions to Amin and Gordon on which they based their report, we would have more complete information.

Miss Roberts: I would be very concerned about whether we had the right to that information and I think we should be looking into that.

Mrs Marland: Mr Applin, just so that we can be very clear about your being here today at our invitation, I recognize that your report was completed in 1987. I know it has not been the responsibility of Coopers and Lybrand since that time to follow through with finding out which of your recommendations have been taken up by the commission or by the ministries. By the answers that you have given this afternoon, you are in a difficult position because you have not subsequently studied the commission nor, I gather in response to some of the answers, have even been able to read any of the annual reports. Mr Nixon was asking you about annual reports.

I would like to ask you if you have been able to read what we refer to as the Amin and Gordon report which was released on 2 June 1989. It is an interministerial report by the two members. Mr Amin is from the Ministry of Health and Mr Gordon was from the Ministry of Natural Resources. Have you been able to read that report?

Mr Applin: No, Mrs Marland, I have not. I was aware of its existence. In fact, Glenn Thompson of the Ministry of Labour called me and apprised me that I might be contacted by Mr Amin, as part of that. I was not

contacted by him and I made no attempt to contact him. I do know that it is in existence and I know some of what it covers, but I have heard of it only second hand.

Mrs Marland: All right. In this report, they do identify backlog in two categories and under backlog 13 months and over—I do not think that your report went to that length of backlog—in this report they identify that in 1986 the backlog of papers that was 13 months and over was 63.1 per cent and in March of this year, that has now risen to 71.1 per cent. It is very difficult to ask you questions based on anything since you did your report, if you have not been involved. I am just wondering how you can really answer questions today on anything since you did your report at all.

Maybe I can ask you another way. Were you aware of the allegations that were published in the media and which were dealt with on the floor of the House about various problems at the Ontario Human Rights Commission this year?

Mr Applin: Yes, I was.

Mrs Marland: I cannot ask you about the specifics of those because they are identified in this Gordon-Amin report—and you have not read that—which you are not expected to have. I am just placing that point.

One of the recommendations that your report made in August 1987 was that the executive director not report to the deputy minister but to the chief commissioner. That in fact did happen, but according to the Amin-Gordon report of June this year—unfortunately the report is not numbered but, I think, it is somewhere around page 30 if we had randomly numbered those pages ourselves—it says in the report that that has taken place, that now the executive director no longer reports to the deputy minister but to the chief commissioner; but it is indicated that that has created some blurring of the positions with the chief commissioner apparently or actually assuming some of the others' responsibilities.

I would like to ask you if that is something that you might have anticipated, since you had recommended that?

Mr J. B. Nixon: Mr Chairman, on a point of order: I think it might be valuable to have counsel's advice, and the point of order being simply that I asked counsel to consider whether or not this line of questioning is appropriate because the questioner is framing the question on the basis of an excerpt from a report which Mr Applin has not read and the evidentiary basis is not something which he is familiar with or the context from which the quote comes and he is being asked to render an opinion. With respect, I do not think that is a fair line of questioning.

1530

The Chairman: I would think the witness before us today has certainly done an excellent job of answering the questions and I am sure that if he feels it is not appropriate he would get around it quite easily.

Mr McGarva: The only thing I would add, Mr Nixon, is that it might be a fair question of the witness with respect to any of the recommendations that were made by Coopers & Lybrand in 1987 to ask him what risks they anticipated flowing from the recommendations, what downside they saw and was this sort of blurring one of the downsides that might have eventuated.

Mr Applin: Maybe I could address this. Referring back to some principles of how you run an agency like the commission, I suspect it varies, depending on the stage of evolution of the agency. I can imagine an agency being set up by this government, appointing a chairperson and that chairperson having to build the agency from scratch, being the chief executive officer, the chief procedural architect, the chief hirer of all the talent, the chief administrator and the chief financial person.

As an agency evolves, the role of the chairman changes. Prior to the most recent chief commissioner, Mr Anand, it was not clear to me what the role of the chief commissioner was when we were looking at that commission. That is reflected in our comments about the commission and our comments about its acting more as board of directors.

Clearly, when the government appointed the most recent commissioner, that commissioner had a very different view of what the chief commissioner's role should be, much more activist, much more hands-on and a much more reform-minded role. This is my comment, quite frankly, as a lay person looking at it from the outside in, not having studied it.

So there was quite a change from the previous commissioner, Canon Purcell, to Mr Anand. That is bound to change the relationships. You change one person, and that person's concept of the job is different, then the relationship between that one person and the executive director, and the people who report to that executive director must change. My view is that it was a change for the better, in the sense that something had to be done to grab hold of it and make it happen, and it was not happening before.

Mrs Marland: Mr Applin, the recommendations that your report made in 1987, I guess it really is difficult to—the report is so complete, it is very easy to follow the flow of why those recommendations were made. However, it is very difficult to sit here today and ask you what you think of them because you do not know what happened to them, nor are you expected to know because in 1989 you were not asked to do another investigation of the Ontario Human Rights Commission, so to sit here and say, "What do you think about what happened to recommendation X from your report?" when you have not had the advantage of studying the status of the commission today. Certainly the fact we are having these hearings because everything is not perfect in the rose garden at the Ontario Human Rights Commission, the reason the hearings are taking place into the human rights commission are because of allegations that were made in April and May. Subsequently, the former Minister of Citizenship, the member for Scarborough-Agincourt (Mr Phillips), agreed it was a good idea to deal with the allegations in public and either dispel them, get rid of them, clean the house or, once and for all, recognize whether there was any validity to them.

I suppose the only way we could really ask you questions today, other than what we can by reading your own report—

Mr J. B. Nixon: This is your view, Margaret.

Mrs Marland: —and reading your recommendations, which I found to be very comprehensive and very far-reaching. I guess an alternative interpretation could be that if those recommendations were not followed, some of the problems your report identified would continue to flow because unless you make changes, if you identify a problem and a cause and do not take the recommendation and make changes, obviously those conditions will follow and continue to be there.

Really, I find it difficult to ask you questions today based on the fact we are not asking you for a two-year update. You have not been asked, that has not been the commission of your firm, Coopers and Lybrand, so I feel it is a little unfair to ask you where these recommendations go and what is your reaction to the commission today. For that reason I do not have any more questions for you.

Mr Curling: In your report, which I will confess I have not read in detail, some of the things that came out that you may not have enough time to assess and analyse, even when there were amendments being put in place, to see what effect it could have on the human rights commission. You say that any changes must be consistent really with the philosophy and the policy framework within which the commission operates. It must be consistent if you are going to change, if you are going to have amendments to it.

You proceed to make recommendations. I consider one of the most important things this government could do, or any government in any country, would be to have a proper human rights law protecting one's rights. To say in a report basically that there is not enough time to assess whether the amendments, the laws that come into place will be appropriate, would you not say that in itself is accepting a sort of defeat, that, "I cannot come out with proper amendments or proper procedures which a human rights commission could follow"? Should I make myself clearer?

Mr Applin: No, I am just thinking about my reply. I do not want to duck behind the cover of a mandate which was restricted, but let me just explain to you the phone call I got from the deputy minister when we were asked to do this. Mr Thomson called me and said, "We're doing an update to your 1985 study, but we're adding on a review of this systemic issue," which I was aware of. I said, "We'd be delighted to help." He said:

"It won't be a very extensive piece of work. All we need for you to do is to go back in and reamass some of the figures or update some of the figures you had done in 1985, add on two more years, take a look at what we were proposing to see if the planning committee on operational review had done its job and come back with a report. It will only take you about four or five weeks. Here's your budget and that's all you can spend."

I went three times over that budget to do this report. I did not get paid for it, but that is beside the point. The terms of reference really sucked us into this issue of what was wrong with the commission. I am not complaining. I am just trying to give you a sense of it started off like this and it finished up like that. You can see by the way this report is written that we felt we had to go as far as we did because it was not addressing the issue properly unless we went as far as we did.

Maybe we did not go far enough. Maybe we had to take a further look at the issue of the statute and how it was organized and what have you. But consultants rarely are asked to do that. I quite frankly do not think they are the best people to look at it anyway. I am not a lawyer. I am a management consultant who takes a look at why organizations work or why they do not work. The one thing you have to accept, for the most part, when you do work in government is that the one firm stake in the ground is the piece of legislation. You can nibble around the edges and suggest that a few words here and there are changed and you may actually be directed by your terms of reference to take a look at a piece of the legislation, but you cannot sort of go back into the guts of it and take it apart and say, "It should be like this," because that is really the job of legislators and lawyers. I am not a

legislator or a lawyer.

1540

Mr Curling: There are a couple of things, I presume, that are at stake. I am sure that there is a more superior situation at stake. First, the company, Coopers and Lybrand, is called in to do an assessment. So their credibility is at stake whatever they take; what is given to them. You are almost—I was about to say something earlier on in the introductory remarks—given a basket to carry water in a way. That could be wrong, but when you have this mandate to carry this out, you then immediately say that you realize that it is bigger than what the government is asking you to do. In other words, the conclusion itself could not be precise, because the fact is that you said you were three times beyond the budget. I presume then what came into being was the people said you have a commitment to the people at large to deliver good amendments to the Human Rights Commission to see what procedures could be followed. Therefore, is there then a stage in your report that you would have said to the government, "I cannot do what you are asking me to do"?

Mr Applin: I did that on a couple of occasions to the deputy minister, but he still wanted the report and we produced it. That is sometimes what you have to do. It was clear on several occasions that we were running into issues that were beyond the original scope of what we were asked to do. Some of them were addressed in Mr Robertson's report, which, I am sure, will clarify some of the issues for you. Sometimes, we were asked to just complete this report, get it on the table and get it considered rather than going down too many avenues of exploration which would have taken far too long to complete. Whenever you are given a task to do, there must be some limits on how far you can broaden it. Otherwise, (a) it will never get completed and (b) it may even become irrelevant.

Mr Curling: I also have a specific question then. Did you see that the longer a case is on the books, the more liable it is to be dropped?

Mr Applin: You are now talking about a specific human rights case?

Mr Curling: I am talking about specific cases. I am talking about the backlog itself. It comes down to the individual who has had his or her case on the books for a year or 13 months and sometimes he is waiting for a job or waiting for something to be decided to proceed on. The fact is, after a time, because it is there so long, they give up the case and say, "I cannot fight this system any more." Are there any studies that show that if the person hangs in there longer, it is more liable that he would drop the case?

Mr Applin: I think the studies show that two things happen the longer a case lasts. Either people drop it and leave it alone and do not pursue it, or positions become become more entrenched. So what you get is kind of a bipolar distribution. People take extreme positions. They either say: "The hell with it. I am going to leave it alone, forget it and walk away from it." Or they get more firmly entrenched, dig their heels in and say: "Damn it, no, I am not going to give up. I am going to stick with this one."

So that tends to be what happens as the cases prolong. Of course, as cases prolong, memories suffer. It makes it far more difficult to resolve a situation that is 13 months old than it is to mediate a situation that is only two or three weeks old. So, in this case, most particularly, I think, justice delayed is clearly justice denied.

Mr Curling: That is a question that Mrs Marland brought up and I think will be dealt with maybe when the events in full come forward and all that, and then we can always deal with that later on as a subcommittee.

I have missed my thought here. Let me go back. It is within this context. In doing your study, the staff morale, I presume, was shaken a bit because they were not very clear what direction they would follow, because there were different ways of reporting to the ministers. Did you find the morale itself in there broken down considerably and that, to repair that damage, even from 1987 on, it would take a greater effort to build that up in order to deal with the public afterwards?

From the stories that came out of there—I get the feeling that within the Ontario Human Rights Commission, the race relations directorate, there is a lot of frustration and that the fight has turned within. In other words, sometimes even racial accusations are being levelled within there. The last thing we would want to see is a body representing human rights outside fighting within itself. Did you find any frustration when you were doing your study?

Mr Applin: We are talking now about the 1987 study, are we?

Mr Curling: Yes.

Mr Applin: The race relations directorate was a separate entity by then, under Mr McIntyre.

Staff morale was not good in the commission, from our perspective. That was caused by several factors, not the least of which was the workload and the feeling that you never actually got to the bottom of the barrel at any stage. It was caused by a lingering—I do not know the technical words for it, but they had a complaint about their classification, the way they were classified and paid. That had been lingering on for some months, if not a year or two, unresolved. That caused some morale problems.

What was your last point, sorry?

Mr Curling: Did that make it more difficult for you?

Mr Applin: In both 1985 and 1987, we convened focus groups with staff members, primarily to test on them our preliminary recommendations for improvements to the case processing method, because obviously people who work the system know the system far better than any consultant from outside can know it. A combination of outside objective review plus an internal sense of whether it would work is the most appropriate way of fine-tuning any system. So we ran focus groups with several groups of employees. In general, they were somewhat disheartened by the lack of resources they had been receiving, and by the lack of direction they had been receiving, as well. They were not happy campers, no.

The Chairman: In your report, you indicate that the commissioner should take a greater control and operate more as a board of directors. If there were amendments made to the legislative framework to make it more of a functioning board, what would you suggest?

Mr Applin: The point we made, and I made it earlier, is that within the confines of the current legislation, we believe that the commission could take control—there was no reason why it should not be more in control than it

was—that the chairman could be a much stronger, more autonomous and more independent chairman and that the commission could grab more control of its responsibilities to develop policy. It is almost as if the system is running them instead of they are running the system.

The Chairman: Is that where you relate your assessment of delegating staff to certain decision-making functions within the framework?

Mr Applin: I must admit it has been some time since I looked at the legislation, but one of the recommendations that was discussed was whether some responsibility for deciding on cases could be delegated to staff within properly promulgated guidelines rather than have the commission decide on every case.

The Chairman: Is that the way it is now? Does the commission decide on every case now?

Mr Applin: I believe that is the case. I would have to look at the legislation. I have copies of the act here, but I have not looked at it for a while.

We were advised that you would have to change the legislation in order for that to happen. Some of the commissioners' point of view was that a mediated settlement between two opposing parties might not necessarily be in the public interest. In other words, there is a third party to consider when you are dealing with an issue of discrimination, and that is the public interest. So the commission was reluctant to give up too much responsibility in that regard and face the risk of inconsistencies creeping into mediated settlements. That is my best recollection of the debate around the question of delegation.

1550

Mr Philip: I would like to get a supplementary on that. I am not as familiar with this act as I am with the Ombudsman Act or some of the other acts that deal with similar types of things. In looking through the act, there is no designation of what I would call security of position for the chairman. Section 26(3) of the act states: "The Lieutenant Governor in Council shall designate a member of the commission as chairman and a member as vice-chairman."

Section 26(4): "The Lieutenant Governor in Council may fix the remuneration and allowance for expenses of the chairman, vice-chairman and members of the commission."

Is it not true that in most cases where an important quasi-judicial function takes place, as in the case of the Ombudsman, the Auditor General or the Provincial Auditor, he has a guaranteed position for not less than five years and therefore can be fearless, if you like, in any of his decisions, knowing that the only reason he could be removed would be by an act of the Legislature and for considerably serious cause.

Would this kind of system perhaps make for a more independent human rights commission, that is, if the chief person in charge of the commission knew that he was being appointed by the Legislature for not less than five years and perhaps reappointed at the pleasure of Her Majesty up to the age of 65 or whatever, as they have done in other acts?

Mr Applin: I am not very familiar with all other acts. My understanding is that the chief commissioner or the chairman of the commission is an order-in-council appointment. Whether it is a designated term or not, I am not sure. Most other order-in-council chairman appointments I am aware of are for designated terms.

Mr Philip: I would appreciate it if counsel would look into this. On a quick reading, as I see it, he has no security. He could be removed tomorrow then if he "irritated the right people," or the wrong people, depending on how you manage to put it. I really wonder how you function in a judicial capacity if you know that you can be removed at the whim or designation of a minister at any point in time and whether that should be something the committee might consider.

The Chairman: Any further questions? If not, Mr Applin, I want to thank you for coming before the committee today and answering the many questions. You have done an excellent job.

Mrs Marland: I noticed that on Wednesday afternoon at three o'clock we have a space from 3:00 to 3:30. I wonder if the committee would agree to an additional name for that time today rather than having the committee sit around for half an hour with nothing to do on Wednesday afternoon, bearing in mind that the subcommittee is now going to meet at 11:30, I understand, on Wednesday morning to decide who else may be invited.

The Chairman: I thought it was 12 o'clock on Wednesday. Perhaps the deputy minister might be a good choice.

Mrs Marland: Could we have an agreement to fill in that time? Can I just ask one other question of the subcommittee? This meeting on Wednesday—when you look at the rest of the schedule for the rest of the week, I think we have one or maybe two times free on Friday morning.

Is it the intent that we give people two days' notice when we decide what additional people we are going to ask to come before the committee? Are we going to give them two days' notice on Wednesday?

The Chairman: Perhaps we could have some names for anybody who wants to fill in the three o'clock one. Mr Philip, you wanted to address this subject that she brought up.

Mr Philip: No, I wanted to address a different matter in relation to procedure, and I have a specific proposal.

Mr Breaugh: It is my indication that we are inviting people to appear, not ordering them. If that is the case, we are not giving them any kind of notice, we are asking them if they would like to appear. They will indicate to us when it is convenient for them to appear and we have to accept it on that basis.

Mrs Marland: When we had our meetings the first week in August, we had a similar discussion. When we were talking then about who we would invite to come before the committee, we said there would be people we would invite and that we would also advertise for people who were interested in coming before the committee. When we had that discussion on Tuesday 8 August, it was decided that we should give people lots of time and lots of notice to prepare for their appearance before this committee. Therefore, we put the hearings off until today, being 2 October, from Tuesday 8 August.

Now what has happened, unfortunately, is that even the people who are scheduled for this week have ended up having at most one week's notice. So we have rather unfortunately boxed in everyone who might be interested in coming with a time limitation, because the people who did respond to the advertisement have ended up with a rather inconvenient process, I would suggest.

The Chairman: Do you have somebody that you can recommend?

Mrs Marland: I would suggest it is perfectly true we are at this point inviting people, but I think since today is Monday and some of the people whom we have scheduled still only were confirmed last Friday for this week, we might this afternoon try to get for Wednesday afternoon one of the people who were on my list. I can only suggest people from my list because I do not know what other people's lists are and contain. I would suggest that we try at least for the former executive director, Mike Gage. Maybe we could try for one of three, the former chief commissioner, Raj Anand, since Mr Nixon said he would agree to Mr Anand, and—

Mr J. B. Nixon: Margaret, I will respond. Do not try to speak for me, okay?

Mrs Marland: Oh, Mr. Nixon, I would never try to speak for you. I am just recalling what you said at the subcommittee, which was that you would only have Mr Anand out of my list of five names.

And perhaps Anne Molloy, the former director of legal services. Any one of those three, if they might be available with two days' notice, could come on Wednesday afternoon.

Mr J. B. Nixon: This is exactly why Mr Breagh said, "Let's have a subcommittee meeting." If we are having a subcommittee meeting now, let's adjourn the committee and have a subcommittee meeting. I planned to do it, as we agreed, at 12 o'clock on Wednesday, but I am quite content to do it now.

The Chairman: Would the committee agree to a subcommittee meeting once we adjourn now to deal with filling in the space that has been discussed?

Mr Breagh: I have no objection to having the steering committee meet, but it seems to me we have had this argument today twice. I do not see why we would be stupid enough to have it a third time on the same day. At least we should have the good grace to wait for another day and have it again.

Mr J. B. Nixon: I am with you, Mr Breagh.

The Chairman: Is that the consensus of the committee?

Mrs Marland: I am only suggesting it, Mr Breagh, because have got some time on Wednesday.

Mr Breagh: I have no intention of hearing witnesses of this kind in a half hour period Wednesday afternoon. I intend to spend some time with them and be a little more thorough than that, so I am not prepared to do that.

Mr Philip: I wonder if I could make a proposal to the committee. I have found that in inquiries like this, it is useful to do readings with our staff, maybe once, sometimes even twice a day, but at least on a daily basis. I am wondering if it would not be useful for us. We do have very talented

research and legal counsel, and I think that I would find it useful and I think, constructive, I might add, to give the committee hearing some focus if once a day we came in half an hour early and had an open brainstorming with counsel and with legislative research to revisit, if you want, the testimony that we had had the previous day, and to openly discuss what the focus might be in the day ahead of us.

I think that this will probably give us some focus. It will mean that we will constantly be taking a reading on where the hearings are going and I think will end up to be of assistance to our researcher, who is trying to copiously take notes and pull things together. I think that when we have this very talented—I cannot say high priced, because they are underpaid, but at least very talented—people available to us, then we should have perhaps an in camera meeting every morning half an hour before, for those of us who wish to attend, to just have advice and brainstorm with counsel and research.

The Chairman: We did that when we had the Re-Mor hearings and it worked out excellently, and I think that that is a good idea. I would certainly support that idea.

Miss Roberts: I support that idea. That would be excellent. I like seeing people early in the morning so I suggest 9:30 am.

The Chairman: In camera committee meeting at 9:30 in the morning and then we go into a full committee for the rest of the day. The committee is adjourned until 9:30 am in camera, 10 tomorrow morning in public forum.

The committee adjourned at 1603.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

ONTARIO HUMAN RIGHTS COMMISSION

TUESDAY 3 OCTOBER 1989

Morning Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Curling, Alvin (Scarborough North L) for Mr South

Harris, Michael D. (Nipissing PC) for Mr Runciman

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Farnan

Smith, E. Joan (London South L) for Mr Miller

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

McGarva, Bernard, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

Individual Presentations:

Amin, Karim, co-author of the Report of a Review of Recent Staffing Practices
for Senior Positions within the Ontario Human Rights Commission; Director,
Audit Branch, Ministry of Health

Gordon, Roger M., co-author of the Report of a Review of Recent Staffing
Practices for Senior Positions within the Ontario Human Rights Commission;
Acting Assistant Deputy Minister, Administration

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday 3 October 1989

The committee met at 1005 in room 151.

ONTARIO HUMAN RIGHTS COMMISSION
(continued)

The Chairman: I call the standing committee on government agencies to order. Today we are dealing with the report from the Ministry of Citizenship. Roger Gordon, I believe, has done that report. Mr Gordon and Mr Amin, if you would sit up at the table there, we will give you some time to make a presentation. Perhaps after that committee members will have some questions for you.

Mr Amin: We do not have a formal presentation to the committee but would be pleased to answer the questions you have.

Mrs Marland: Mr Amin and Mr Gordon, I wondered if your original report to the minister had numbered pages. Ours did not.

Mr Amin: No, we did not have numbered pages, and the reason for that is called technology. The machine just could not give us numbered pages at that time.

Mrs Marland: All right. It is just that there were some areas where punctuation was missing, the narrative did not flow, and I began to think it had been cut and pasted, because several sections just do not come together. I thought my copy might be different from the one you gave to the minister; but that is fine.

Mr Gordon: We suffered from secretarial woes. We were having this typed in a suite in the Royal York. The temporary help that was helping us out did an admirable job, all things considered, I think.

Mrs Marland: So they did not give you the budget for the secretarial help.

However, it is a very serious report and I think it has very serious implications for a number of individuals plus the future of human rights in this province. I just want to say at the outset that the reason I raised the concern on behalf of our Progressive Conservative caucus in the House was that I felt very strongly that once the allegations had been made through the media, those allegations had to be dealt with and found either to be baseless or to have some standing and then dealt with in a remedial way.

So our caucus from the very beginning has had only one goal in mind and that was to take away the cloud that was over the Ontario Human Rights Commission, because while those allegations sit out there, the integrity of the most sensitive agency of the government was being questioned; all of us need a human rights commission and it is a very important agency.

I have read the report very thoroughly and particularly want to start with some questions about the director of policy and research that I notice in

it; it is on page 22 in my numbering so it is a good way into the report for those members who do not have their numbers.

Mr Philip: Would it be useful if we all numbered our reports so that we all have the same numbering system? Otherwise we are going to end up wasting an awful lot of time.

The Chairman: This report I have is numbered. Is yours not numbered?

Mr Philip: Mine is not numbered.

Mrs Marland: Ours were not numbered when we received them. I just started from the front and went right through.

Mr J. B. Nixon: Are you the using the cover pages?

Mrs Marland: Number 1 was the second page; the numbered contents are my page 1.

You say in this report, "From the first set of applications, six candidates were interviewed but none were successful." I am just reading from the report under "Director of Policy and Research."

Mr Philip: What page are you on?

Mrs Marland: I am on page 22.

Miss Roberts: It is page 20 in ours.

The Chairman: You are two ahead, Margaret, So we will just subtract two from yours.

Mrs Marland: Okay; it is on page 20.

You said, "A review of the documentation on file failed to indicate a reason for this decision, as there was a complete lack of evaluation materials to support the decision." You then go on to talk about the job description. It seems from the report that there were two job descriptions developed for the director of policy and research.

1010

You note on the bottom of page 21: "These qualifications vary significantly from those in the written job specification in the area emphasizing 'legal' qualifications." Then on the following page you talk about the fact that: "The EMB provided a list of 22 candidates from their executive inventory search. From this list, the executive director selected four candidates and added the name of the special adviser to the chief commissioner," who was Tanja Wacyk. You do not say that in the report, but am I correct that Tanja Wacyk was the special adviser to the chief commissioner?

Mr Amin: That is correct.

Mrs Marland: That name was added, although, "This employee was not on the EMB's executive inventory." What I would like to ask you is that as you proceed, I think on page 23, you say, "We have confirmed that the successful candidate was not on the EMB's list," who, again, is still Tanja Wacyk.

Mr Amin: That is correct.

Mrs Marland: You say you: "discussed this matter with the executive director," Mike Gage, "who stated that he added the name of the special adviser to the chief commissioner after consulting with an official of the EMB. The authority for adding names to the interview list rested with the executive director," Mike Gage. Could I ask you on what basis Mr Gage said he added Tanja Wacyk's name? Did he say why they did not repost the competition after they changed the job description?

Mr Amin: In a competition such as this, it is usual to proceed to a second competition without posting it if it is a management position. In this case I do not think Mike answered specifically as to the reason they did not go to a second posting. The inventory search is something that is done usually in government.

Mrs Marland: But is it normal to go to a second review of candidates and change the job description in between? If the job is advertised in the first place with one set of criteria and then the criteria are changed, is that not then a new competition?

Mr Gordon: I guess I am the personnel expert in this team. I think what you are talking about would be in the best of all possible worlds. That would be what we would advocate as best practice. That is what should have most properly been done.

However, we are dealing here with what is a management competition. The staffing policies within government on management competitions do allow significantly more flexibility to senior management in terms of making some decisions. They have such tools as the ability to waive a competition entirely. For example, if they have a candidate whom they think is suitable, there is nothing within the broader Ontario public service system to stop senior management just appointing a person.

So it is against those types of very broad staffing authorities that exist in management jobs that one has to balance off the concept of best practice versus what the practicalities are of getting a job filled. That seems to have been what happened here.

Mrs Marland: I would think that for the most sensitive employment agency, the Ontario Human Rights Commission, whose mandate it is to investigate other hiring practices, perhaps one of the recommendations we might look for is that they do practise the most ideal hiring policies.

Mr Amin: We so concluded in our report. We felt the competition should have started anew given the circumstances.

Mrs Marland: Yes, I noticed that at the bottom of this page. I also notice on this page that you say, "In response to allegations that an agreement existed between the chief commissioner and his special adviser ensuring her a senior position, we reviewed the document in question and found it to be a usual secondment agreement with no commitments beyond her former position." Did you speak to any of the people who made those allegations about an agreement existing between Raj Anand and Tanja Wacyk?

Mr Gordon: Yes, we did.

Mrs Marland: Do you have the names of the people who made the allegations?

Mr Gordon: Maybe that is something I can get out quickly here, and solve some of the dilemma I am in. I talked to our legal folks about: Where do I sit vis-à-vis freedom of information on this stuff? Am I okay? I talked to our pet lawyer on this item, and his suggestion was that that is a question I should put to the committee. He did not really know where I stand in terms of information I got from folks, naming names and that type of stuff. Can someone give me a little direction on that?

Mr Breaugh: Perhaps it would be useful, Mr Chairman, to review with him that when you are invited or brought before a committee of the House to testify you are privileged, as the members of the committee are; the purpose of that being very simply that it is not the House's intention to allow a witness before a committee to be tied up with subpoenas, lawsuits and things of that nature. It would be my view, and we have a fairly extensive procedural investigation of that, that witnesses appearing before committees are in fact privileged, so anything you say here cannot be used against you later on in court. The only thing I can think of that would hinder you in any way is that you may have access to some great state secrets here, but I do not think that is what we are talking about at the moment. I do not think you should feel encumbered by anything like that.

Mr J. B. Nixon: On that issue, I am not sure that is the question the witness asked. The witness, as I understood it, was concerned about naming names of individuals who may have been approached and may have discussed these matters with these gentlemen, with the witnesses, during the course of the review. I understood the witness to be concerned about the propriety of naming those individuals who may be presently in the employ of the Ontario public service, or may not be in their employ. That is why the aversion, as I understood it, to naming them, and the reference to the Freedom of Information and Protection of Privacy Act. Just bear with me for a moment.

I think it is a different issue, and I think that is one of the reasons we chose to have counsel here, and I would like to hear counsel on that. If counsel wants to take five minutes to think about it, I would encourage that.

Mr Breaugh: I have no argument with that, but I would remind the witness and the members of the committee that if this committee chooses to, it can seek a Speaker's warrant. We can subpoena witnesses. Even if we simply invite witnesses to come before us, if a member of the committee chooses to ask the question, "Who are those people?" the witness has no option. The witness has to answer. That is the reason why the witness has the privileges.

The Law Society of Upper Canada has done an extensive report on this, the standing committee on procedural affairs has done an extensive report on this, and it is clear that the witnesses are protected from any outside harassment, as a member would be, but it is equally clear that if these witnesses are asked to name those people, they do not have any choice on the matter. They could in fact be held in contempt of the Legislature. You can seek all the legal advice you want, but the matter has been canvassed rather extensively and it is fairly clear.

Mr J. B. Nixon: With respect, Mr Breaugh, you have had the benefit of reading those reports, which I have not, although I have asked for a copy of that report. I am not sure that your position is correct. You may be correct or you may not be correct. I am just saying I am not sure. We have retained counsel. I think it is an appropriate time to seek their advice. These witnesses, as you know, are not here under subpoena. They came here freely of their own volition at our request. The issue is not what they will

or will not say, the issue is: What about those individuals whose affairs and revelations have been made known to these gentlemen? What sort of protection do they have, if any, before this committee? I do not know if they have any protection. I do not know if Mr Amin can stand up and say: "I talked to 13,000 individuals. Here are their names, and all of them told me Mrs X was a jerk." I do not know if they can say that. I do not know if it is appropriate to have it said in this committee even if it was said. I would like to have the advice of counsel on that, that is all.

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The Chairman: Legal counsel, are you prepared to give us any advice at the present time or would you sooner wait to get some background?

Mr McGarva: I would like to ask a couple of background questions first, if I might. I would ask the witnesses whether in their discussions with individuals, any overtures were made with respect to a commitment to keep confidential the information you were receiving, to keep their names confidential. Were any such commitments made?

Mr Gordon: We gave the commitment to the extent that we could. We gave an assurance that we would not release that type of information in our report. That was the extent of the commitment we made.

The Chairman: Could you tell the committee what your legal counsel advised you? Did they advise you not to answer certain questions?

Mr Gordon: I talked to our counsel who does freedom of information. My concern, as a personnel practitioner, is that a lot of the Freedom of Information and Protection of Privacy Act impinges on the managing of personnel files; you know, who the other applicants were and that type of stuff. That was the context in which I asked our legal counsel. He said he really did not know what the status of this type of committee would be in relationship to that act, and his advice to me was to ask you.

Mr McGarva: It is a very sensitive issue. I would just as soon not give the committee any advice on it at the moment without studying it a little bit further. I can see obvious concerns that Mr Nixon has alluded to in terms of the public interest of identifying people who may continue to be employees or staff members at the commission.

I think it might be appropriate for Mrs Marland and other members of the committee to continue along with their questions to determine what information you elicited, at this point without identifying the individuals from whom the information was elicited. I will provide the committee with a further opinion as to the naming of names as soon as I have some more background on that.

The Chairman: I think that clarifies it.

Mrs Marland: I am quite content to withdraw my question about the names of people you discussed the allegations with. However, I want to ask you about the document you saw and discussed with these unnamed people who made the allegations. The reason the document is so significant is that it has been suggested that there was a draft agreement seen by a woman by the name of Lynn Dowling, who was a word processor operator.

Apparently this draft agreement guaranteed Tanja Wacyk the position of director of policy after her tenure as special adviser to the chief

commissioner. I think it was based on the fact that that draft agreement did exist, to the point that some people saw it, that the allegations were being made. Whether or not it was signed is very significant, because there could be all kinds of things drafted on a machine that never get finalized and never get signed. I would like to ask you if you did see a draft agreement that was between Raj Anand and Tanja Wacyk.

Mr Gordon: We had that allegation before us, that there was this document promising things. The document we were able to locate was a completed secondment document. The commitment in that document was to ongoing employment back at the old level. It did not mention a specific job. A lot of the wording overlapped in terms of the one we were told existed as draft, but the final document we were able to secure was missing, if you like, the more damaging parts that people were attributing to the draft.

The document we found did not make any hard commitment to a specific job; just the normal secondment agreement that exists throughout the old Ontario public service when people are transferred from job to job. It always provides some sort of parachute back.

Mrs Marland: Did you ask to see the draft agreement you had heard the allegations about?

Mr Gordon: Yes, we asked for all the documents related to this matter. The one we got was this finalized copy.

Mrs Marland: But did you ask to see the one specifically that the allegations were about, the agreement between Mr Anand and Miss Wacyk?

Mr Gordon: We asked if such a draft existed, yes, if there was such a document.

Mrs Marland: What were you told?

Mr Gordon: We were told there was not such a document, that we got the document.

Mrs Marland: You asked for it and you just received the one document you have described.

Mr Gordon: Yes.

Mr Amin: If I may add, we asked for all information related to the competition and related information to the competition. We went and secured all the files that were available to us.

Mrs Marland: Would you be willing to release to this committee any of the documents you had access to that helped you compile your report?

Mr Amin: Subject to legal advice.

Mr J. B. Nixon: With respect to Mrs Marland, I think the same issue may apply, the same consideration that was raised on the issue of naming names. We might just expand the scope of legal counsel's examination.

The Chairman: I would like to be fair to the committee. I would like to allow each member 20 minutes. Mrs Marland has almost used up her 20 minutes and then we will rotate.

Mrs Marland: With respect, I started at 10 after and there were five minutes out for the discussion that involved the other members. I agree that it should be fair in terms of time, so I think I do have five minutes left at this point.

Mr Ballinger: Keep smiling, Margaret.

Mrs Marland: I did not interrupt anybody yesterday when we were not timing people, so I think in fairness—

Mr Breaugh: That is your five minutes.

Mrs Marland: I would like to ask a question about the director of compliance, on page 24. You identify in the report here that under the section for director of compliance, there were two female visible minority candidates who were identified by the screening officer as being qualified but who were not interviewed. You go on to say the executive director explained the decision not to interview them by saying that both these candidates were or had been members of staff at the Ontario Human Rights Commission and were known not to have the required skills for the position. Through your investigation, did you know that one of those candidates was a black woman who apparently had the highest case closing rate in the commission? Did that come out in your investigation?

Mr Amin: I was told that by someone who spoke to me, that she was very efficient. She had the higher skills anyway. I was also told that she was black.

Mrs Marland: Is it true that these two female visible minority women had more years of experience than the successful candidate who ultimately was made the director of compliance?

Mr Gordon: The director of compliance job went to an external candidate. Anyone who was on staff would have more seniority.

Mrs Marland: Is it true that the director of compliance who did receive the job was a man by the name of Marty Schrieter who was brought down from the Yukon?

Mr Gordon: That is correct.

Mrs Marland: Apparently, in the Yukon he had supervised one and a half people. That was his responsibility. Did that information come out to you?

Mr Amin: We do not know that.

Mrs Marland: In terms of the facts, is it true from your investigation that Jim Stratton who was the current director of compliance, had far more experience than Marty Schrieter and also that another black candidate by the name of Merv Witter from Hamilton who was acting director—both of those individuals—had more experience and yet did not get the position.

Mr Gordon: In fairness to the people running this competition, experience is a somewhat relative term. Yes, I think both the two individuals you name had worked in the field of human rights longer, if one can define experience that way.

1030

Mrs Marland: You say a number of times on page 25 "that the successful candidate was rated significantly higher than most of the other candidates." You say that at the end of paragraph 2 and at the end of paragraph 3 you say again "that the successful candidate was rated significantly higher than most of the other candidates." Would a candidate, to be successful, not have to rate higher than all the other candidates?

Mr Amin: I think the words here are "significantly higher." The word is not just "higher."

Mrs Marland: I am sorry; it is "significantly higher," but it still says "than most of the other candidates." My question is, to be a successful candidate, would you not have to be rated significantly higher than all the other candidates? Would you not have to be the best, the most qualified to get the job?

Mr Gordon: Yes. I think the semantics here are saying that there were a number of candidates involved in this process. There were a couple who were close, but in terms of all the people they interviewed, he was significantly higher than most of the candidates and there was a closeness among a couple of them.

Mr Amin: There was also a question of privacy when we wrote this. We did not want to come too close to identifying the candidates and their scores because that would have violated their privacy.

The Chairman: You will have to put your name on the list again, Mrs Marland. We will move on. We have Mr Philip, Mr Nixon and Mr Breough.

Mr Philip: I wonder if I can refer you to page 5, on which you refer to the "blurring of responsibilities between the chief commissioner and the executive director and between the director, legal services and the director, policy research." In 1985, Coopers and Lybrand pointed out the same kinds of problems and made some proposals for rectifying these problems. Are you suggesting that there was no improvement or that there was some improvement? How would you qualify your remarks?

Mr Amin: Are we talking about blurring of responsibilities?

Mr Philip: The blurring of the responsibilities.

Mr Amin: I think what became clear to us is the fact that the responsibilities of the executive director and the chief commissioner were not quite clear. Some of the directors felt they reported to the chief commissioner and some felt they reported to the executive director. Usually the executive director, being the number one civil servant, would take on the administrative and financial management responsibilities. In this case, there were instances of the chief commissioner being involved in some of those responsibilities.

Mr Philip: You are saying that the chief commissioner in fact was performing what would be expected of the executive director?

Mr Amin: No, that he appeared to have had some hand in that. We could not say it was performed, but he appeared to have had some hand in some of the executive director's responsibilities.

Mr Philip: Were there clear job descriptions available for each of the positions, including director of policy and research, director of legal services, executive director and chairman or chief commissioner as you would call him?

Mr Gordon: We saw specifications on the director jobs, if you like. We did not see any documentation around a description for the chief commissioner. One may exist, but we did not see it.

Mr Philip: Would that be a useful thing to have?

Mr Gordon: I think it would be helpful. Again, I think we saw an overlap of responsibilities, possibly. We got that more from staff in terms of they were unsure who they were reporting to in some instances. I think that certainly would have clarified lines of communication for staff, if they knew to whom they were completely answerable.

Mr Philip: Would it be safe to say that the chief commissioner should be the chief policy person whereas the executive director should be the executor of policy, the administrator of policy? Is that a fair distinction between the two different positions?

Mr Gordon: I think that is a good beginning. I think it needs more work than that, to be quite frank.

Mr Philip: But that would be a starting point?

Mr Gordon: Yes.

Mr Philip: What you are saying is that in fact the chief commissioner, rather than devoting his talents, and he is a person of considerable talents, to policy and to setting general directions, was occupying a considerable amount of his energy in the day-to-day running of the operation.

Mr Gordon: I think, to put that in context, one needs to realize that when he assumed his responsibilities, there was not an executive director in place, so the chief commissioner had to pick up both those jobs, if you like. I guess what we found is that because they had all been in one basket to start off with, they did not get sorted out, possibly, as quickly as they could have been.

Mr Philip: Having put on the hat of the executive director, he did not know when to take it off.

Mr Gordon: Yes.

Mr Philip: But you go on to say "between the director of legal services and the director of policy and research." Coopers and Lybrand were critical of that overlap and fuzziness in 1985. You are saying that when you did your recent study it was still fuzzy, and that even though they had had a

few years to correct the problem, they had not in fact corrected that problem.

Mr Gordon: Yes. That is what we said.

Mr Philip: I want to refer you now to an area I find particularly fascinating, the role of the Human Resources Secretariat, pages 12 and 14 of your report: "The competition for the executive director's position was conducted with the assistance of the Human Resources Secretariat. The remaining six competitions were conducted solely by the commission with the chief commissioner participating in all of the competitions except for the position of the director of finance."

Previous to this, was the Human Resources Secretariat involved in various types of hiring? Was it a new direction that the Human Resources Secretariat started to move back from that role?

Mr Gordon: If one looks back very far in history—what we are talking about is the authorities that exist to appoint people under the Public Service Act. The Human Resources Secretariat has delegated out the authority to appoint to most chief executive officers for everything save and except jobs that are part of the executive compensation plan. The executive director here is classified in that executive compensation plan. Therefore, the Human Resources Secretariat has retained to itself the authority to recruit those jobs. All other jobs in the Ontario public service have been delegated out, by and large.

Mr Philip: So this would not be a matter of discretion on the part of the commission. It would have been an obligation for them to involve themselves.

Mr Gordon: Yes.

Mr Philip: Then on page 14 you say: "We noted also that the selection board was comprised of different sets of members throughout the interview process. This competition was supervised by the Human Resources Secretariat."

Is it not fair to say that the Human Resources Secretariat are sitting there at the table. They notice this revolving-door set of interviewers. Were they asleep at the switch? Why did they not push the button and say: "Stop. This is an inappropriate way to conduct job interviews"?

Mr Gordon: Yes.

Mr Amin: I do not know that I can speak for the secretariat, but it would appear as though one would get a consistent message if one were to have the same team interviewing for a particular job.

Mr Gordon: We said in our recommendation that clearly that would be preferable.

Mr Philip: You said that it would clearly be preferable, but the onus, as I read your report, seems to be, "The commission mucked up." But what I am saying is that here you have the Human Resources Secretariat. It is not the commission. They should have known better. They are the chief personnel people in this province. They have the responsibility for ensuring that the

Manual of Administration and the proper personnel procedures, the state-of-the-art personnel procedures, are followed.

Here they are at the table. You have flagrant violation of normal personnel practices. I know of no personnel office worth its salt that would follow this kind of revolving-door set of interviewers, and in the case of where there is a grievance procedure, they would be open to a grievance procedure on this. Yet they do not blow the whistle. They sit back and quietly sit there at the table and do not say anything. Surely this is negligence on the part of the Human Resources Secretariat.

1040

Mr Gordon: That is a difficult conclusion for me to reach. I guess I would say that we reached our conclusion and we wrote it down.

Mr Philip: I think you said yes earlier when I used perhaps a word that was less explosive. The Human Resources Secretariat did not do its job, did it?

Mr Gordon: I guess what I would say is—

Mr Ballinger: You are sounding more like Clayton Ruby every day.

Mr Gordon: In trying to be fair to the folks who are involved in that, again, the best practice is that you should have a consistent selection board. I think they could defend it arguing that there were some key decision players there all the way through. I believe the commissioner sat in at all the interviews and he is clearly the person who is going to make the final decision. To that end, maybe it is not the best of all possible worlds, but it is not a total disaster either.

Mr Philip: I want to take you back to page 6 where we deal with terminations. You say, "Termination practices, including severance packages, for those employees whose positions were declared surplus, adhered to normal practice."

Can you tell us what criteria were used? Did you find any criteria by which employees were terminated? What were the criteria on which these decisions were made to let them go? What kind of severance packages were provided to these people? I am not asking you to name individuals.

Mr Gordon: There was no documentation of specific criteria that said why these people were going to be let go, save and except that one can attribute it to the fact that there was a reorganization. That reorganization did effectively make some positions surplus. The severance packages these people got involved seven months of severance, which is one month more than is required under the Public Service Act for management employees, and the services of placement counselling.

Mr Philip: Was there any indication that any of the people who were terminated did not have the qualifications to fit into the new structure that was established?

Mr Gordon: This might be a stretch, but there was nothing that sort of was an analysis of that, except that one of these people was interviewed

for several of the new positions and found not to be suitable. Against that test, that was some form of analysis.

Mr Philip: How many people would have been terminated?

Mr Gordon: Just the two, that we are aware of.

Mr Philip: But there were no criteria that you could find as to why each of those two was terminated.

Mr Gordon: Not something individually specific. In both cases, it was attributed to the reorganization within the commission.

Mr Philip: In both cases, those two positions were eliminated in the new structure.

Mr Gordon: Yes.

Mr Philip: The severance packages were seven months. How long would each of these people have been employed prior to the termination?

Mr Gordon: I do not know specifically, but they were long-service employees.

Mr Philip: You are talking longer than seven years.

Mr Gordon: Yes.

Mr Philip: Giving them more than a month for every year of service.

Mr Gordon: Yes. The critical factor here is that when you declare a management employee surplus, the Public Service Act requires, regardless of length of service, six months' notice and there is an option to management employees of taking the cash in lieu of the notice.

Mr Philip: I want to get back to this blurring of the different responsibilities of the different departments within the commission. Coopers and Lybrand was critical. But what you had is an influx of large amounts of money into the commission. Was it your opinion from your observations that there was a proper allocation of that new influx of money into the different departments, or did the blurring of the different roles make that difficult or impossible for you to put your finger on?

Mr Amin: When you say blurring of responsibilities and you bring that into allocation of financial resources, I think they are two different things. The decision to allocate resources is somewhat different from the decision to get into a blurred-responsibility situation.

Mr Philip: Except that if you are going to allocate resources to a particular department and that department's role is blurred, you do not really know how to put a dollar figure on how much that department will get, because you are not sure what exactly it is doing. It is overlapping with other departments.

Mr Amin: For the departments in which we talk about blurring, I think the question of financial allocation to legal was well thought out; the allocation to policy was well thought out. It is what happens after that. It is the extent to which one implements divisions on policymaking and the extent

to which legal services does its job, which may be seen by policy as a policy issue, and when policy does something it may be seen by legal as a legal issue. I think it comes to implementation and leadership in getting those functions implemented.

Mr Philip: With the present structure, do you feel that the additional moneys that were spent were allocated in the proper manner? Do you have an opinion on that? Was there too much spent on one department and not enough on another, for example? Could there have been a different allocation that would have made the commission more effective?

Mr Amin: I think that is quite a difficult question to answer, in the circumstances. If you are suggesting that there could have been more of a weight in terms of getting to the cases and reduction of the backlog, as opposed to going to administration, someone may argue that that could be a better decision. I do not think we did very much in terms of questioning the allocation and questioning whether \$500,000 is appropriate for a department or not. I think we stayed away from coming to that kind of judgement.

Mr Philip: Since Coopers and Lybrand came in or indeed since the influx of the new revenue and the new financing, was there any internal audit done to ascertain whether value was received for the money in the different departments or whether there should be reallocation of funds or staff in any way?

Mr Amin: No. The allocation just took place. I think it would be quite premature to ask for an internal audit without seeing at least a year's operation; by the way, many of the staff had not been hired at the time we did our review, so an internal audit would at best be quite premature.

Mr Philip: I think you make a good point; but you are not saying it would be premature if it were done, say, six months from now.

Mr Amin: I would say that now is a good time to see where things are, have a look in and give management a snapshot picture of where things are. Sure.

Mr Philip: Do you feel that an internal audit or an external audit would be most beneficial?

Mr Amin: You see, I am such a good internal auditor, I am biased in favour of internal auditing.

Mr Philip: I am quite aware of some of your qualifications and ideas. You also, I believe, though, are someone who advocates switching internal auditors around from department to department, if I recall, and I hope I am not giving any—

Mr Amin: No. That is true.

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Mr Philip: Therefore, you obviously believe in a cross-pollinization of internal auditors. My question is, and I am not suggesting that it necessarily has to be the Provincial Auditor: Would an external audit of some kind be more useful than an internal audit at this point in time, or six months from now?

Mr Amin: Right now would not be an appropriate time to touch the commission. I think the commission is at a point of healing. It is at a point of redevelopment. There is a new head there, and I would like to suggest, if I had anything to do with that, stay away from the commission for now. Give them a chance to settle down. Give them a chance to heal. There is healing taking place.

It is a small place and the chief operating officer, the chairman of the board, ought to have reasonable mechanisms in place to know whether he or she is effective. I would say in the next several months, the new team—if there is going to be a new team; I know there is a new head—ought to put those measures in place and then, a year from now, have a review and see how the measures are working out.

I think auditing does not solve terribly much. It probably gives you a little more to look at. But at this time, I would suggest that there ought to be operational measures, effectiveness standards, monitoring mechanisms, reporting and evaluation procedures in place, so that the chairman, a committee such as this and the public at large would be able to know about things such as the critical success factors of the commission and how well the commission is administering its business and spending the taxpayer's money.

Mr Philip: I would like to get into the backlog, but I see I have five minutes, and therefore that is too large a topic.

The Chairman: Not according to my clock. It indicates your 20 minutes have expired.

Mr Philip: I put down 10:35 as when I started questioning.

The Chairman: It was 10:30 I had.

Mr Breaugh: Yes, but you are using that sundial and you have the shades pulled.

The Chairman: That is right.

Mr Philip: I never knew your eyes to fail before, but I guess there is always a first time.

The Chairman: Hansard had 10:30 am.

Mr Philip: Well, I will not argue with Hansard, because—

The Chairman: Okay. Then we can move on to the next question.

Mr Philip: May I ask one question?

The Chairman: One question.

Mr Philip: When I read the order in council for the appointment of the chief commissioner, I see that the chief commissioner was appointed and designated chairman of the Ontario Human Rights Commission for a period of three years, effective 1 January 1988. If you check the act, there is no designated period for that. I gather that this is a flexible period. The government could have decided to appoint for five years or could have decided to appoint for two years.

When someone is in a judicial or quasi-judicial position, particularly if the position, as it should have been, was to deal with systemic sorts of issues, I guess I always worry at the discretion that a government or a series of ministries can have in removing that person without proving cause.

Do you feel it might be in the interests of the human rights commission to have in its act a period of time by which the chairman would be appointed and under which he could only be removed for cause, similar to the Ombudsman, the Provincial Auditor and a number of other key positions, where some tough and occasionally unpopular decisions have to be made and the person should not be under the influence of the gun of suddenly being removed by the government? Would that help in the role? If this man is an Ombudsman, why is he not appointed like an Ombudsman for a period of five years?

Mr Gordon: I guess you are asking us to fill a role that is not normally ours to fill. On this subject, my opinion is worth about---with 50 cents, it would get you a coffee. Nothing in our review would contribute in that issue.

Mr Amin: I am with Roger, but with respect to perception of the independence of the position, I think from a question of public policy it may be looked at as a better thing to do.

Mr J. B. Nixon: Mr Philip briefly referred to your credentials, Mr Amin. I am wondering if both of you could take a short time to tell us a little about your background and education, career background and training, qualifications and so on.

Mr Amin: I guess this is a good time. I will never get another chance to be on camera.

Mr Gordon: Let my dad go first.

Mr Amin: He kept calling me dad all the time at the Royal York.

I joined the public service when I immigrated here from British Guiana in 1970. I joined four or five audit offices and I qualified as a certified general accountant. I then became chief of audit in the Ministry of Colleges and Universities and then chief of audit and then director of audit in the Ministry of Education. After that I went on to the Ministry of Industry and Tourism, where I was director of operational review and audit services, and then was subsequently director also of audit services for the Ministry of Tourism and Recreation simultaneously when it had the dual responsibilities. Following that, I made the wonderful decision of going to the Ministry of Health, where you have billions and billions of dollars to be spent and accounted for, as director of audit services. I have been there ever since.

Mr Gordon: I started with the Ontario public service in the Ministry of Housing, as property manager. I moved from there to be a personnel officer at the Ministry of Revenue. While with the Ministry of Revenue I went from personnel officer to regional personnel officer. I became their staff relations expert and moved on to become the manager of staff relations. I then moved to the Ministry of Natural Resources as its manager of staff relations and compensation, which really works to become manager of policy. I then became the director of their human resources branch and I am now acting as the assistant deputy minister for admin, all with Natural Resources.

Mr J. B. Nixon: Does either of you have any post-secondary education?

Mr Gordon: Yes, I have an honours degree in urban studies.

Mr J. B. Nixon: Mr Amin?

Mr Amin: Yes, I am a certified accountant, five years.

Mr J. B. Nixon: That is a certified general accountant?

Mr Amin: Yes.

Mr J. B. Nixon: When you went through your investigation of this matter, you understood the purpose of the review that you were to undertake? In fact, on page 1 of your report you refer to that purpose. Just for purposes of our record, I would like to read that to you and ask you if you can confirm that this is still your understanding of what the purpose of the review was. You state, "The purpose of the review is to provide the Deputy Minister of Citizenship with independent and objective information and true relevant facts." Since you prepared this report, has anything come to your attention which suggests that you have not done that?

Mr Amin: No, sir.

Mr J. B. Nixon: So you believe this to be an independent and objective report containing true and relevant facts?

Mr Amin: Yes, sir.

Mr J. B. Nixon: How many people did you talk to? Do you have any idea?

Mr Amin: We did not keep count, but we—

Mr J. B. Nixon: Approximately.

Mr Amin: About 50?

Mr Gordon: Yes, a lot of people.

Mr J. B. Nixon: How many hours did you spend on this report?

Mr Amin: Here is how we can put in for overtime, Roger. We worked, I would say, every day from about 7 o'clock in the morning to about nine or 10 o'clock at night. Then we grabbed our bags and took our bags home and worked over dinner. We only had about 10 or 12 working days altogether, something like that, so we put in quite a number of hours.

Mr Gordon: I guess it would be fair to say we worked somewhere between 10 to 14 hours a day right through the 14-day period we were working on it.

Mr J. B. Nixon: So we are looking at 250 to 500 man-hours?

Mr Amin: We had some help. We had some helpers along the way.

Mr J. B. Nixon: About 50 persons interviewed or 50 interviews?

Mr Amin: I would say we talked to about 50 people ourselves and had four helpers. We sent people to the north, to Ottawa, to London, to Hamilton and to St Catharines. We thought speaking to the field was terribly important because our impression was that if we had not talked to the field we might have left a can of worms opened. They might have complained and rightly so. They needed to be heard. So we spoke to a number of employees out there and locally we spoke, in the first several days, to just about anyone who had information for us.

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Mr Gordon: There were two other folks employed more or less full-time working through the accounts part of this.

Mr Amin: And information and verification of data bases, etc.

Mr J. B. Nixon: So the work you did was quite extensive.

Mr Amin: I would say so, yes.

Mr J. B. Nixon: You reached a number of conclusions, some of which previous questioners have alluded to, but one of the conclusions I found worthy of note is with respect to the past chief commissioner. You state, "...it is our opinion, that he is a person of honesty and integrity who is deeply committed to human rights...Nothing we discovered in our review has given us cause to question this perception." That was your conclusion?

Mr Amin: Yes, it was.

Mr J. B. Nixon: And it does not change. You also referred to some irregularities in the hiring practices.

Mr Amin: I would say deviations from normal practices, as opposed to irregularities. If the adjective "irregular" was used, I do not think we need to stretch that to "irregularities."

Mr J. B. Nixon: I have a couple of questions about that. You conclude that the commission gave inadequate priorities identifying candidates from visible minority groups when they recruited for senior positions. I am wondering if you have any recommendations as to how you might implement a higher standard or a higher priority for identifying candidates from visible minority groups. How would you do that?

Mr Gordon: The commission itself had not a bad model. They showed us, and I think we referred to it in the report, a sort of draft employment equity plan. I think we observed from reviewing their draft plan that if it had been in place, the planning process that was envisioned there would have walked them through a process where the hiring of a visible minority candidate would have been a top priority.

Mr J. B. Nixon: Do you know if that draft plan has been approved?

Mr Gordon: We do not know.

Mr J. B. Nixon: Were you able to give comments on the draft plan?

Mr Amin: Only what is in our report. We read the draft plan and we made a comment in the report.

Mr J. B. Nixon: Okay. But this is something that you would agree is necessary and would go a long way to resolving some of the problems that have been encountered in the past.

Mr Gordon: I think the model they have developed would be a good one for their agency. I would not necessarily recommend that it be adopted everywhere, but it would be a very useful one for their agency.

Mr J. B. Nixon: These plans are specific to the agency that develops them?

Mr Gordon: Yes.

Mr J. B. Nixon: You raise the issue of failing to maintain notes and commented on it. How significant is that, if an interviewer does not maintain notes? In the overall scheme of things everyone, we assume, is trying to do a good job, to hire the best person for the job, and if one did not keep notes of the interview, how significant is that?

Mr Gordon: I guess it is significant in two ways. One is that it goes to the issue of best practice and the reality is that within the public service we are subject to audit. Clearly, if we are going to be subject to audit we need to give the poor auditor a break. So from that point of view it is significant, but in terms of affecting quality of decision-making—

Mr Amin: I would say that the question of documentation of government is central to the management in government. If we in government do not have appropriate documentation then we have very poor public administration practices. We are accountable to so many people. We have so many different bottom lines and I would like to think, as we do our jobs in government, we need to have appropriate documentation in place.

When the taxpayers ask, we need to answer and answer quickly. When the candidate who did not get the job asks, the candidate ought to be told why not, and ought to be given an opportunity to meet with the people who have decided, to know what that candidate could or could not do to improve his or her performance the next time around. So the documentation is something that we—"we" being in government—ought to have in place.

Mr Philip: Would you not agree, notwithstanding what you have to do because of the accountability system in public enterprise, that it is just common management practice in private enterprise for personnel people to keep notes, not just for future training of individuals who may not be as successful, but also to ensure that when decisions are made, they hire the best possible people, particularly if they are interviewing large numbers of people for a particular position?

Mr Gordon: Yes, I think that is fair.

Mr Philip: IBM, CN or Air Canada would not think of doing interviews without following that kind of procedure.

Mr Gordon: It is fair across the board. I think every text one reads on good personnel practice advocates the importance of documentation. There are so many possibilities of review that one needs to do it as a minimum from

that point of view and, as you say, it contributes significantly to the quality of the decision-making at the end of the process.

Mr J. B. Nixon: The essential goal of keeping notes is to ensure accountability for decisions taken. Is that correct?

Mr Amin: Yes.

Mr J. B. Nixon: So whether or not the right person is hired is not determined by whether or not notes are taken, but the fact that you have kept notes means that you can give a written memorandum that was taken at the time of the interview and explain your decision.

Mr Amin: It is a complicated question, the way you put it. You keep notes to ensure that you have made the right decision at the end of the day. Having done your analysis of your notes and having conferred with the other members of the team, you then can say, "This is the right person in the circumstances," or, "These are the last two persons in the circumstances." It is common sense, so I know what I have asked and what I have heard.

Mr J. B. Nixon: We have talked about the Manual of Administration and I am sure you know it inside out and backwards. I do not, but I have seen it and it is big. It has rules beyond rules which are important for the operation of government, but indeed are sort of arcane to all but those who are specialists like yourself in the administration of personnel matters, the administration of audits and so on and so forth, I would think. Certainly it is difficult for me to read and understand it as a politician, but that may be my personal failing. I do not know. Do 85,000 civil servants know, understand and read the Manual of Administration regularly?

Mr Gordon: I do not think a lot of them cuddle up with it at night.

Mr Amin: You are right. It is a complicated book. What is in the Manual of Administration is just good business practices. For the most part, managers in the province are good business practitioners. The spirit of good business practice is captured in the manual, and if one thinks along those lines, one does not go very far wrong, and then one does consult because of a particular decision one wants to make.

Mr J. B. Nixon: You also have talked about the Ontario Human Rights Commission's being a small organization and somewhat unique. It is an agency. It is certainly not directly part of a ministry. I do not know whether it is a schedule 1, 2, 3 or 4, but it is somewhat separated from a ministry and has its own culture. Is it possible that the rules of the Manual of Administration may not be entirely appropriate for this unique organization with its own culture?

Mr Amin: No. I would say for the most part that the new rules of the manual would apply. They are not a commercial, profit-making organization. They do not qualify for exemptions, say, for the Metropolitan Toronto Convention Centre. They are quite a government-based organization. I think most of the rules of competition, hiring and what not would apply.

Mr J. B. Nixon: You say, "Most of the rules."

Mr Amin: I would say all of the rules, and more so in their

situation because of the way they face the public and the way they are quite accountable to every citizen of the province.

Mr J. B. Nixon: But the rules for hiring junior staff would not apply to the hiring of senior staff.

Mr Gordon: That is correct. There is a very clear division within the Ontario public service in terms of management versus bargaining unit employees.

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Mr J. B. Nixon: Can you elaborate on the difference between the rules for hiring management as opposed to bargaining unit staff?

Mr Gordon: The bottom line for the bargaining unit people is that you must comply with the provisions as set out in the collective agreement, which require that ads be posted and that there be a time frame for how long they have to be posted. There are provisions for what sort of qualifications have to be flagged. Then it puts in a standard in terms of selection. It requires that people be selected on the basis of qualifications and ability to perform the job, which narrows the focus down to be job-based.

In the selection of management personnel, again we have within the purple people eater, if you like, some best practices; but it also does recognize that there are a lot of circumstances where one might want to deviate from those practices. For example, you might want to bring a candidate in for training and development reasons. It may not be the best candidate, but for management employees, we have the option of doing that. We may want to look at rotational moves for career development. A lot of other objectives one might want to achieve through the staffing process are permitted within management ranks.

Mr J. B. Nixon: The Coopers and Lybrand report that Mr Philip has referred to, which I am sure you are familiar with, talked about the conflict between the various roles of the commission: enforcement versus education and prevention, advocacy versus enforcement and mediation. Having reviewed the Coopers and Lybrand report, which was prepared in 1987, and having done your report this year, have you observed any adjustments in the commission's performance to either ameliorate or moderate those tensions or to try to more satisfactorily deal with those tensions?

Mr Amin: The significant thing that came out of the Coopers and Lybrand report is a new organization and probably new thinking that should have gone into systemic discrimination reviews. I do not think we looked from an operational end at how the systemic discrimination unit was being implemented or indeed how the policy unit was being implemented. I do not know if we can answer that question fairly.

Mr J. B. Nixon: But you did observe that there is a systemic unit and a policy unit.

Mr Amin: Yes, they have brought in a new organization.

Mr J. B. Nixon: When you were there, were you aware of any policy guidelines or operational guidelines that had been developed to deal with those different relations between the policy unit and the legal unit?

Mr Amin: We were not aware that there were guidelines that were being developed to sort of dispel the blurring or the conflict that existed between those two.

Mr J. B. Nixon: But there were policy guidelines being developed for the interpretation of the code.

Mr Amin: Indeed, in fact, we were told that one of the commissioners chaired a small committee. By the way, the commission is doing quite a bit of work in terms of policies and procedures and trying to get the complaints resolved from that end of it. I think they have to do a little bit more in terms of standardizing some of their investigation practices and making sure that information is flowed back and forth to the staff in the various field offices. They are doing quite a bit in terms of procedures, manuals, training and what not, but there needs to be some work done in that area.

Mr J. B. Nixon: There is more work to be done.

Mr Amin: Sure.

The Chairman: I want to ask a question on that very last point. Have you seen many changes that have taken place since your report?

Mr Amin: We have stayed away from the commission since the report was issued. Our contact has only been with the deputy minister, trying to give the deputy minister an understanding of our report. We have not returned to the commission.

The Chairman: During your investigation, what reaction did you get from industry with regard to complaints that had been laid against industry, with regard to the commission when it was having its own problems? How could they deal with an industry problem?

Mr Amin: We did not get any complaints from industry, but in terms of dealing with backlogging of specific cases, the backlog issue continued to be a significant issue with the commission. I suppose it is a thing to be resolved, but some of these cases are a number of years old.

Mr Gordon: We did not speak to any representatives from industry. The only people who might play that role were the actual commissioners themselves and we did talk to several of them. They expressed some of the concerns you spoke about.

Mr J. B. Nixon: Just one further question: There obviously is an emphasis on the hiring of visible minorities. In your report, you suggested at the time of this issue being raised that there was an emphasis on the hiring of women at the commission and that seemed to take priority: hiring women into senior positions. Is that correct?

Mr Gordon: That is the feedback we got from talking to the people, that their primary objective, the problem they seemed to be focused on was the need to address getting some female representation into their senior ranks.

Mr J. B. Nixon: Would you agree that it is a difficult job to balance the need to hire visible minorities and the need to hire women, and effectively displace or dispel what everyone had agreed, I think, was an old boys' network in the past?

Mr Gordon: Yes. I think it is fair to say they were trying to manage a lot of number one priorities.

Mr Breagh: I want to start by saying that when your report was first released I read it with great interest and it did allay some of my concerns. It is refreshing to note that other people can find that when they say they have 100 per cent improvement in their case load, it really turns out to be 12 point something or other.

I have some concerns that remain and they come about reflecting on the process here. At the end of it all, what I have is two very fine, eminently qualified, senior civil servants saying that another group of very fine, eminently qualified, decent, upright citizens are okay. Somebody has to ask the question at the end, how much objectivity is in this?

Without challenging anybody's personal reputations or professional qualifications, the government drew up the terms of reference of your report. You are employed by the government of Ontario. You went to look at another agency of the government of Ontario. Your report essentially says, and I do not think this is being unfair, that there were some staffing practices that were not quite up to the standards that you would like to see, but basically you found no wrong.

When I look to the other side of the coin, it is still not clear to me the precise nature of all of the allegations that were made by people who worked at the commission. There has never been very much in the way of a formal opportunity for those allegations to be placed. The only trace that we have of them are a few little quotes, some attributed, some not, in the public press. There has not been a forum. When we probe around a little bit for the names of those people who made such allegations, we are not sure that we are allowed to know that.

At the end of the day, what have I got? Not a lot. Allay some of my concerns here. Soothe my ruffled feathers and tell me that there is nothing wrong there that you found. Before you answer it, I have listened to you this morning and you two folks know what you are doing. I have read the report and you know what you are doing. Why is there this little nagging thing back in here that there are sentences in here like, "We did not find the document," or in your testimony this morning, "The only document we found was something which is pretty normal"? Help me.

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Mr Gordon: I can help you a bit in terms of, "How do you respond to an allegation for which you cannot find a document?" I can make up an allegation. We had to deal with what we could find. We did hear a fair number of those types of allegations, some of which were claimed to be backed up by hard-core data. When we asked for the data, there were no data. When we asked, "Show me a record," there was no record.

When we investigate some of the people who made these allegations, there exist other formal avenues for bringing them forward. If you are a public servant and you have been unjustly dismissed, the Public Service Act gives you a right to grieve that dismissal. Those avenues were not exercised, all of which, from my perspective, went to the quality of some of those allegations. Now we cannot say the allegation is not correct. What we can say is what we

found, that we heard the allegation and there was nothing very much to substantiate it.

That is the fine line. We are not going to call folks liars. We did not have the time. We did not have them under subpoena. We were giving an impressionistic report. When we could not find stuff, we said we could not find it. We did not say it did not exist; we said we could not find it. That is why you get some of what my friends in the labour relations world would call wheedle-wording, and it is there for just that reason. In terms of your discomfort around the quality of our review, I guess all I can say is we do not have any axes to grind. We did not know these folks particularly and went in and tried to look at it on the basis of good business practice.

I think we have been reasonably fair and balanced in pointing to some of the shortcomings. We did identify opportunities lost around the opportunities to hire minority candidates. I think when we saw that, we mentioned it quite clearly in a couple of places. We did talk about that. I think there are a number of places where we have come out and said there were things that could have been better managed. As you point out, when we found something hard core in the numbers, we identified it. I think we tried to present a balanced and fair report to both parties.

Mr Amin: By way of illustration, one gentleman came to us, he spoke to us by telephone and said: "I am coming to see you. I have incontrovertible evidence. I am coming to see you with my lawyer and a witness." We said: "When can you make it? Five o'clock, four o'clock? We will give you as much time as you want."

He arrived with personal notes which, in his view, were incontrovertible evidence. The lawyer is smiling. I want to tell you, sir—three hours of our time. By the way, some of those allegations made a lot of press, caused a lot of grief. We investigated his 17 allegations. We had them written on a piece of paper on the wall, and we crossed them out one after the other.

If you have a level of discomfort, it is a level of discomfort that is based on a perception that is not the reality in the commission. The commission was hurt by a few headlines, a few misinformations stemming from the commission communications strategy to deal with the damage control, as they call it in Washington. I think it probably all contributed, to some extent, to the way the public reacted to the commission, but each of the major allegations made was investigated. Each of the major allegations made in the press and by employees and by outsiders was investigated, and where we could substantiate it, where we could deal with it, we dealt with it appropriately.

If you were to look at the piece that dealt with the policy adviser, the allegation in the press was that the chief commissioner—I could be wrong in how I bring it out, but I hope not—somehow caused the appointment of that individual to the job. We went through that. We looked at all the possibilities of deals, etc. We could not find anything.

There was the allegation that individuals were openly discriminated against. We did our level best to investigate those. We could not find hard information on it.

I want to tell you, sir, I was asked by a deputy minister coming out of this review, "Would you do this any differently?" I said to the deputy

minister, no. When I accepted this job, I accepted it to live after the job with no regrets. I think I have no regrets in this case.

Mr Breaugh: I think my problem is simply that I have to exercise a lot of faith here in the process. Fortunately, I have some faith in the civil service and in people's integrity to do their jobs properly. I appreciate the problem.

Each one of us in public life develops little sets of rules on how you deal with things. In my office, if people do not want to give me their names I do not want to hear their complaints. It is as simple as that. If you want to send me a letter and sign your name to the bottom of it, I will try to investigate anything you are upset about. But if you do not have the common courtesy to tell me who you are, you cannot expect me to do very much on your behalf. I appreciate that with much of what you were doing, that was the nature of it. In every workplace, I do not care where you are, somebody is unhappy with something at any given moment in time. It is just the nature of human beings.

I think my problem, though, is this: I am not as confident as I would like to be. I do not think we sent you in there to do an internal audit or to do an examination of hiring practices and procedures. The reason you were sent there, I thought—and perhaps this is where I am wrong—was that the government of Ontario was disturbed that there were calls of improper practices there, and more than just that they did not take notes or did not keep notes, that there was favouritism being practised there.

What gnaws at me is the critical concern that if we expect people in the private sector to do affirmative action programs, we are aware that the first complaint will be that you hire people because of the colour of their skin, that they are not qualified to do the work, that it just cannot function. So the human rights commission, rightfully or wrongly, is looked at in the sense that if they cannot do it, how in the world do we expect anybody else to try to do it?

Have we asked the wrong people to do this? Would it have been better to have someone completely separate from the government of Ontario, with no connections, to do this kind of thing? This is not your choice, but similar to what the deputy minister asked you. My concern is, how do I ask two very well-qualified senior civil servants to go and investigate and blow the whistle on another group of civil servants over here?

Mr Gordon: I think one has to put into context what you are investigating here. What you are looking at primarily, the main focus, was the managing of staffing: the seven jobs were filled; we hired no minority candidates. In addition, not only did we not hire any minority candidates, there were allegations of favouritism in some of the candidates selected. I do not care who you want to hire to do that review, short of restructuring the total interview panel. That is the only way I think you are going to get—if you want a guarantee, you are going to have to sit down and have those people in, ask them the same questions and see how they present themselves. No matter who reviews it, they are going to be reviewing other people's impressionistic data.

I am talking to the members of the selection board and I am saying, "When you asked that question, what sort of answer were you looking for?" I have been through a lot of this in terms of arguing selection cases before an arbitration board. It is, how do you present the evidence of the opinion-maker

in a proper way and how do you cross-examine as well. You are dealing with data that is by nature automatically aged, because the selection board is disassembled, the people are all scattered around the province.

As I say, short of restructuring that selection board and getting the dynamic going with the three or four people who were part of the selection board, you will never recreate it exactly. I do not think having an independent review is going to change that. I think at the end you are still left with the nature of the review. The nature of the process does not lend itself particularly well to a hard-core audit that you can then at the end say, "Yes, this is it." It would be nice if it did, and I think if it did we would not need people like the human rights commission, the Ombudsman and labour relations boards.

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Mr Breaugh: One final thing. We are a little bit perplexed about this matter of calling other witnesses: who they might be and how far you go with this. I guess my quandary is, I really do not have much of an inclination, to tell you the truth, to listen to everybody's complaints about another government agency. There are lots of those around.

We have put together a short list of five people who were named regularly in the press, but we have no way of really judging who has pertinent information to put before us. Could you assist us in some way, either publicly now or privately later, by giving us some indication of what might be a useful exercise for this committee? I think it is fair to say that the committee does not want to go and listen to everybody's complaints and do the job you did a long time ago.

What I am searching for today is, I need somebody to come in and say, "Listen, we were not really part of the investigative process and we were not really involved a whole lot in the dissent," but I need to check base here. The minister is probably happy and the person who is the new commissioner is probably reasonably happy, and we are going to ask Mr Anand to come in, and that would be a reasonable thing to do, I think.

But we do need to have some other people appear before the committee and assure us that your report is a reasonable one, that things are changing and that some problems have been resolved. Just exactly who is a bit of a quandary for us. Could you assist us in that regard? Of the people you talked to, without getting anybody into trouble over his own job situation or things like that, we need to have some sense of what happened here. Can we do that?

Mr Amin: I want to tell you that I have some difficulty setting your agenda for you. I have a lot of difficulty answering that. It would be quite judgemental and quite personal on my part. I think at this time it may be inappropriate for me to point you to speak to director X, Y or Z. It is difficult for me to think about that just now. Perhaps I can talk to you later about it.

Mr Breaugh: Sure. That is fine.

Mr Gordon: I would go so far as to say that I think speaking to Mr Anand is a very good idea. We put that comment in our report because Raj does speak passionately and well to his job of being the chief commissioner. In

terms of looking for assurances, I think you will find a lot of them flow from getting an impression of the man.

Mr Breaugh: I think the short list of five people we have now is not any secret. They are the people who have been named in public in some way, perhaps in the House, or wherever. I think there is a general feeling among some members of the committee that at the very least they deserve their day in court, their chance to state their point of view. If there is more than that, I think publicly or privately you could assist the committee a little bit in steering us. You really do not have to name people, but if you could provide us with some assistance in that regard, I think we would appreciate it.

Mr Gordon: I know the five people you were talking about. They were in the paper. I think if you went through those five people you would be exactly where you are today.

Mr Breaugh: Yes. That is my problem.

Mr Gordon: You will have heard the two sides of the story, and our examination showed that the two sides of the story are quite black and white. There are good guys and bad guys, depending on whom you talk to.

I do not know if recreating is going to help you. We had a lot of difficulty pinning it down because there is such wide opinion on these things. I have a feeling that even if you talk to those five people, you are going to be left with, "I prefer this person over that person." I do not think you are going to get definitive answers.

Mr Amin: We spoke to those people at length, for long hours. We looked at what they had and we heard their stories. We tried to match theirs to the other stories. We did a lot of work with those particular people who are listed in today's Globe and Mail.

Mr Gordon: The other thing about these people is they are all very skilled advocates. Their profession is advancing their cause and they do so with passion and they are very articulate. They are not easy folks to—when they have a vision of what the truth is, they do not move from it—they are not easy cross-examining.

Mr Breaugh: The difficulty may well be that, from their perspective, they are absolutely correct.

Mr Gordon: That is right.

Mr Breaugh: The way they see it, for the causes that they advocate, that is the total, complete truth. It just happens to be in conflict with somebody else's perspective.

Mr Gordon: Exactly. Yes, that is what we got.

The Chairman: I have half an hour left and I would like to divide it into 10 minutes for each party.

Mrs Marland: Mr Gordon, surely you are not suggesting that Mr Anand come before this committee because he speaks passionately and well. I hope that you would not just single him out as one of the individuals in your report. You said they all are skilled and they would be advancing their cause,

but surely you would not suggest that we hear from only one person who is identified in your report.

Mr Gordon: No, I suggested he would be a good place to start.

Mrs Marland: Yes, but would you agree that it would be fair, if we were going to hear from Mr Anand, that we hear from the other people who are identified in the report?

Mr Gordon: Again, that is your committee. I guess "fair" is a relative term.

Mrs Marland: I was just surprised you would pick out one person.

I want to ask you whether during your investigation it came to your attention, or did you know or did you probe the relationship between Tanya Wacyk and Reva Devins, who is an Ontario human rights commissioner. Reva Devins's husband is Stephen Goudge, the lawyer for the Premier (Mr Peterson). Did it come to your attention that there was a relationship between Ms Wacyk and Ms Devins, as a human rights commissioner whose husband is Stephen Goudge, the Premier's solicitor?

Mr Gordon: I was not aware of that one, not the Devins connection.

Mr Amin: No, I was not aware of the Devins connection, and even if there were a connection, it would have to have had a material effect to the case we were reviewing for it to be part of our review.

Mrs Marland: Okay. How many times did you meet with Mr Anand during your investigation?

Mr Gordon: I think we met with him probably three or four times. We talked to him on a lot of other occasions over the telephone.

Mr Amin: Many, many telephone conversations.

Mrs Marland: So you did speak frequently to him. Did you speak daily to him?

Mr Amin: I would not know. Perhaps.

Mr Gordon: Not quite daily, but regularly anyway.

Interjection: What about hourly?

Mr Gordon: No, it would not—

Mr Amin: There were many conversations.

Mrs Marland: On page 32 of your report, when you come down to your overall conclusions, you say at the top of that page, "We conclude that there was no evidence of discrimination, favouritism or competition rigging in the hiring process." Then in the next paragraph you say, "There were instances where normal hiring procedures were not followed and might have resulted in inequitable treatment for some candidates in these competitions." Would you agree that those two paragraphs contradict each other?

Mr Gordon: No, I would not. They address quite different things. One is that there is no evidence and the other is that it does not discount the possibility, if you like.

Mrs Marland: Did you think to ask the typist for this document, this agreement that you were told about that existed between the chief commissioner and Tanya Wacyk guaranteeing her another job? Did you think to ask the typist, who everybody knew was Lynn Dowling, for that document?

Mr Amin: We were not aware of Lynn Dowling at the time. I was not aware.

Mr Gordon: We spoke to the commissioner's secretary at the time, the one who existed when we were talking to her, but I do not remember the name Lynn Dowling.

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Mrs Marland: It was in the media. Did you think to ask the Toronto Star what its sources were? Because it was the Star that revealed the contract, it was the Star that talked about this contract existing where Mr Anand and Ms Wacyk had an agreement about a future job. Did you ask anyone in the Star about his sources?

Mr Gordon: No.

Mrs Marland: Did you think the Star story was not true? Did you have any feeling about that? The allegations were in the Star. Did you have any feeling about verifying those?

Mr Gordon: We worked through those allegations.

Mr J. B. Nixon: On a point of order, Mr Chairman: I am not clear what story in the Star we are referring to or what allegations—

Mrs Marland: What I said, Mr Nixon, was the story in the Star is the one about the contract.

Mr J. B. Nixon: I would really like to finish my point of order, Mrs Marland. My point of order, quite simply, is that you referred to a story in the Star or stories in the Star; you referred to allegations made by the Star. I do not know what they are. We should have them on the table. I do not know if the witnesses know which allegations you are referring to. There were many, and you have not itemized them.

Mrs Marland: Are you using up my time, Mr Nixon?

Mr J. B. Nixon: No, I am raising a point of order and I would like the chairman to rule on it.

Mrs Marland: That is fine.

The Chairman: The point of order is very well taken. Mrs Marland, you may continue.

Mrs Marland: The stories I was referring to in the Star are the stories that refer to a contract existing. I would like to move on the

position of director of legal services, that of Anne Molloy. Did you interview Anne Molloy?

Mr Gordon: Yes.

Mrs Marland: Were you able to ascertain the reason for her resignation?

Mr Gordon: We heard her reason for resignation from her, yes.

Mrs Marland: Did you have any reason to disbelieve what she said?

Mr Gordon: Not to disbelieve, no. We heard other sides of the same story, but that does not mean we disbelieve her.

Mrs Marland: What did Anne Molloy give as her reason for resigning?

Mr Gordon: I think there is a resignation letter around. If we can find that, rather than try to quote it off the top of my head six months after the fact—

Mrs Marland: You have a copy of the resignation letter as part of your documents for your report?

Mr Gordon: Yes.

Mrs Marland: Okay. We could get that from Anne Molloy, I am sure. Did Anne Molloy tell you that Mike Gage had asked her to find a position in legal services for Tanya Wacyk and that she refused to do that?

Mr Gordon: She told us that, yes.

Mrs Marland: She did tell you that?

Mr Gordon: Yes.

Mr Amin: My recollection is not as precise. Anne Molloy discussed that issue with us. I do not know whether she said she refused. I think she said something along the lines of, "I don't think I can work well with Tanya in this legal services unit," but I do not think she shot it down entirely. That is my recollection.

Mrs Marland: Okay. I want to go back to the point you made about the fact that competitions are not necessary for senior positions. At the beginning, you said the executive level can make appointments without competition. You also went on to identify that you would have recommended that Tanya Wacyk's position of director of policy should have been redone. Your words were, "The competition should have been cancelled and begun anew." Why are you saying, on the one hand, that competitions are not necessary at that level of administration and, on the other hand, that her appointment, the competition should have been cancelled and begun anew?

Mr Gordon: What I am saying is that we have, within the broader Ontario public service, the ability to appoint people without competition. That exists. It is a right that accrues to senior management, if you like, under the Public Service Act, and that right is unfettered anywhere.

Mr Philip: Can you give us a reference?

Mr Gordon: I have forgotten the section. It is early on, the authority to appoint. That is the framework in which we operate; it is that we have the authority. Now, having said that is the authority in which we operate, which is quite a strong statutory authority, we then look at what are best practices. Our manuals of administration talk to what are best practices.

I guess in the vast majority of cases we endorse and believe in the competition process. Once having committed to the competition process, there are some good ways of running it. One of the good ways is that when you recruit for a job you know what it is. That is just plain common sense. If you are going to be asking people questions and looking for skill bases, you should have some sense of what job you are selecting for. That is what I was addressing in that comment. Having worked through the process and finding that the job description they were working off did not adequately describe the job, best practice would have been to go back and, for the benefit of candidates who had applied, say: "Oh, by the way, it's a different sort of job from what we thought it was. You might want to reconsider your application." You might want to readvertise it, because you might have had a different set of people applying. It is sort of commonsense good practice.

Mrs Marland: Would you agree that the Ontario Human Rights Commission must have the highest possible standards and policies so that it is beyond question because of its own mandate, which is to investigate hiring practices in the public and private sector in this province? When you talked this morning about the best practice being significant, were you saying that the best practice of hiring and standards for hiring have not been the case in the Ontario Human Rights Commission as identified in your report?

Mr Gordon: One is led to that conclusion. I think we have said in the report that we talked to—I forget the language you used exactly, but we did identify some irregularities and shortcomings with the process, yes.

Mrs E. J. Smith: On a point of order, Mr Chairman: I do not want to interfere with the time. Am I correct in feeling there was no need or purpose in having any reference to the husband of one of these people we are discussing introduced into testimony? I object to people not being considered as individuals, rather than on the basis of whom they happen to be married to.

The Chairman: I never observed that, but perhaps you did.

Mrs E. J. Smith: Thank you.

Mr Ballinger: It is called guilt by association.

The Chairman: It appears to me that we will be going until 12:15 pm. We have three other speakers and I will allow them 10 minutes each. Mr Curling, you are next.

Mr Curling: I do not want to go into a long editorial as some of my colleagues have done, but one cannot resist, really, just making a short comment that Mr Amin and Mr Gordon come with a unique combination to do this report, one being an auditor extensively and the other in personnel management as a personnel officer. I will ask a couple of questions in this respect.

You mentioned somehow that if the commission had followed the plan, did the practice according to plan, it would be an excellent process. Did it not

concern you, and I think the question is asked in many ways, that the commission should be the example of how plans should be adhered to in practice? While doing this, did it not concern you that these practices were not being followed according to plan?

The other part of this question, which is a wider one, is: Considering the fact that you both have extensive experience in other areas of the government, were these the sorts of evidence you also saw in other parts of the government, that it was common practice that sometimes practice was not followed according to plans?

Mr Amin: Well, it is a very long and deliberate question. Let's deal with the last question first, across government. Sometimes they have plans; sometimes plans get off the rails for one reason or another. Sure, these things happen. In the case of this employment equity plan, it was not approved at the time and they did not have it as a part of their operating plan for the year. Our comment was based upon reviewing of the proposed plan. It was not an operating plan at the time; it had not been approved.

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Mr Gordon: I guess that would be my observation, that what they showed us was a draft plan. Our analysis was that if they had followed that plan, they would have been led to the selection of visible minority candidates. It was a good planning process. It would have identified for them the need to address that recruiting need in a more aggressive way.

Mr Curling: The reason I asked the question is: Why are we doing this if we sit here and assess what will happen and go to your report and say: "These are the things that happened and we won't do it again; we shall follow this process once more," then we find we put something in place again and in two or three years' time we are back here saying, "We had a lovely plan, but nobody followed that procedure."

You did not answer that first part. While you were going through that process, were you not somehow—I do not want to say appalled or shocked, but very concerned that here was the human rights commission not following the procedures as are exercised in other companies, and say: "Listen, we came in here to investigate. We got a complaint from an individual in your company saying, 'My human rights have been violated,' and we are here to investigate that. This is the way you should follow it"; then, as you investigated those people who were carrying that out, finding that they were not following that. I am talking about the conclusions of your report there, when you said you did not see anything irregular.

Mr Gordon: We looked at the existing staffing practices and asked ourselves, "Can we find irregularities?" There are some irregularities. "Can we find discrimination and that type of stuff?" No, those are not examples of that. I guess what we are saying is that if one takes the step back that you do, clearly an agency like the human rights commission would have been very well advised to have hired minority candidates—let's put it that way—at the very least.

To do that they probably would have been well advised to have some form of employment equity program to focus their initiatives there, focus their exercises. One of the difficulties with the straight raw merit principle, as someone who is grappling with managers in this process throughout the government, is that everyone says, "Merit principle, merit principle, merit

principle." That is well and good, but are you prepared to wait for the second coming?

You have to take some more aggressive action. That is what an employment equity plan speaks to: recognizing the shortcomings, recognizing that there is historical discrimination, and addressing those things in a head-on way. That is the purpose of an employment equity plan and that is why we would endorse such a process.

The Chairman: Are you saying the commission did not have that in place?

Mr Gordon: They did not have that plan. We were shown a draft. It was not yet an approved plan.

Mr Curling: It is a concern. We are not talking about another company; we are talking about the human rights commission. They did not have a plan and that is a concern. I will not pursue it any more. That is a concern I would have, sitting there, looking at it and saying, "My golly, this organization hasn't got it," and this is the organization that should.

Let me move on to the second, because it is only 10 minutes they are going to give me on this one. I think we had seven positions that were up for grabs or were there to be filled. Did it concern you that in one of the positions, I think it was the director of compliance, the commissioner extricated himself? He was not a part of that interview, while he was a part of every other one. That was the one they felt they needed to look at, because they wanted—I think what you said was legal—it did not say legal experience, but some legal exposure or something like that the individual needed. Did it concern you that—or I will ask why the commissioner was not at that interview, because that is the only interview he was not at.

Mr Amin: I think the one he was not at was the director of finance and administration.

Mr Curling: I am sorry; that is right.

Mr Amin: No, it did not concern me. I think the selection panel could include the commissioner or it could not include the commissioner. I think the authority to hire rests with the executive director in that case, and it did not concern me.

Mr Curling: The reason I ask is that you took time out to say that the commissioner spoke very passionately about this commission and took a very personal interest; he is a man who is very committed. He had seven very important positions here, a position of finance and administration especially. That was of great concern, and he did not present himself or make himself available for that one. Did he answer why he was not there?

Mr Gordon: I do not think we put that question to him.

Mr Amin: No. We did not ask him.

Mr Gordon: The job is somewhat different from some of the others. I think that it is one that logically would fall to the executive director to recruit; it is much more in his skill basis than the commissioner's skill basis.

Mr Curling: Let me ask one other question. Your statistics about the compilation of the applications show the applications in numbers. There were 109 applicants and they are all in numbers. Then when it came to the visible minority, you put that in percentages. You lose me there; maybe it is because I am not mathematical. You said 20 per cent were there. I think it is on page 20.

Mr Gordon: I can tell you one of the reasons for that. When we talked about the conduct of the review, we talked about the inherent difficulty we had. We have an application form with the Ontario public service that is nondiscriminatory and we do not require people to identify themselves as being members of any community. In fact, it is a violation of the code to do so. But we are given the task of reviewing a competition file after the fact. To that end, we had to make some best guesses about where the minority candidates may have been. Because it was a best guess, we were very uncomfortable with saying "There were 17 minority candidates," for example. The percentage is to allow for the fact that that data was suspect. We did it on the basis of last name.

Mr Curling: Your remark concerns me, then. Why would you be uncomfortable to identify an individual who may be black or Chinese? That was the question in place. The visible minority were excluded—

Mr Gordon: What we were uncomfortable about was saying that Mr Chang is necessarily Chinese.

Mr Curling: But you did so, by names—because Mrs Chang or Mr Curling or Mr Whitton could be anyone. In other words, I would have been placed under the Scottish label, and being white.

Mr Gordon: It is because of that difficulty that we went with percentages. In terms of identifying potential minority candidates from an application file, we did it, and it tends to focus on Chinese and African-type last names. It is the only way you can make a conclusion. There may have been significantly more minority candidates who applied, the Browns and Smiths.

Mr Curling: Would you say that a good lesson to the human rights commission about history would have been helpful, about why names like Curling appear with black people? In other words, we have to face it right up front when we are talking about one's human rights, whom we are dealing with, access to jobs and these other things we are talking about. When we move to identification of names, that would make it extremely difficult for you to assess and come out with a report.

Mr Gordon: I do not pretend to be able to balance those scales. They are enormously difficult. Yes, one needs to be able to identify candidates if you are going to do outreach programs, but by the same token, does not that act of identification discriminate against them? It is a dilemma that I cannot solve, to be quite frank with you.

The Chairman: Thank you, Mr Curling. Mr Velshi, you are next.

Mr Curling: Mr Amin was just about to respond, Mr Chairman.

Mr Amin: I was just going to say that we qualified our report by saying that the count was based on last names, the people we knew, people the personnel officers knew and the people in the commission knew. We also

qualified it by saying that the numbers are, at best, the lowest possible set of numbers in terms of the visible minority candidates.

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Mr Velshi: I have a question leading from what Mr Curling has just said. You mentioned, Mr Gordon, that the code prohibits you from identifying different groups. How will any employment equity plan ever work if we are not able to identify different groups?

Mr Gordon: You do outreach recruitment and you target your advertisements to where you know those groups will be. You develop special affirmative action programs in those areas where you are not restricted or you do internship programs, for example, that are targeted at groups of people.

Mr Velshi: We are still looking at a management level civil servant who is going to identify that he needs so many visible minorities, so many women and so many natives. At some point, some identification is going to be crucial to the process.

Mr Gordon: We can do that identification on a voluntary basis with people who are on staff, but it is when we take that identification into the broader public that we run into difficulty. That is why we had to fall back on those other tools such as targeting where they should be.

If you want to raise the number of natives, as my ministry is trying to do, this is what you do. We are aggressively recruiting on reserves; we make contacts with the chiefs and tribal councils and say, "Here is a program that your people might be interested in." That is a way of drawing applications from that pool. We do not advertise those jobs in the Globe and Mail.

Mr Velshi: So a native in Toronto is never going to know about this job that is available.

Mr Gordon: He probably will not know.

Mr Velshi: In relation to another question that Mrs Marland asked a little earlier, in the executive summary on page 4, you said there is "no evidence of discrimination, favouritism," etc. Then you go on to say that "irregular hiring practices" were noted, and that they do not contradict each other. I just would like to go into that for a while.

How can you make such a statement? Further on you go on to say, "inadequate priority given to identifying candidates from visible minority groups," so you have said there is discrimination; you said, the "highest priority given to hiring women into senior positions." That is discrimination also, whichever way; whether it is good or bad, I am not judging. You have made four statements here saying that there is discrimination and yet you start off by saying there is no evidence of discrimination. I am not too sure I understood your answer to Mrs Marland.

Mr Gordon: I do not find those points to be contradictory. We did not find discriminatory practices. We found irregularities. Those irregularities deal with things such as whether notes were kept and that type of stuff. It does not matter who applied. Those irregularities would go across the board.

On the issue about focusing on women, I do not think it is discriminatory. I do not regard affirmative action programs as discriminatory.

Mr Velshi: On page 6 of the same executive summary, under "Communications of the Commission," you say, "the commission has exaggerated participation of employment equity target groups," and again you are referring to visible minorities. You have identified a problem here. You do not seem to call it discrimination; you call it—what was the word you used?—(inaudible). Why do you make this comment again, if again you are saying there is no discrimination?

Mr Amin: That has to do with the reference to the executive assistant to the chief commissioner as an executive, as a member of senior staff. In our view, the inclusion of that individual to the senior list was inappropriate, and we so commented in our review and concluded that that was an exaggeration.

Mr Velshi: So are you then satisfied that there was no discrimination at all, under any circumstances, in the hiring practices of the Ontario Human Rights Commission?

Mr Amin: Yes, we are satisfied on the basis of information available to us.

Mr Velshi: Okay. Mr Breaugh earlier asked you what type of evidence you would need to prove that there was discrimination. Were you looking for somebody to say, "I have discriminated," somebody admitting that, or do you read between the lines and go by a sense of feel? In your position, as senior people in the ministry, you should have some sense of feel of what is going on. No senior person is going to say, "This was a black person or a brown person; I did not want him." How do you decide?

Mr Gordon: In terms of sense of feel, from the conversations I had with members of the selection board, the sense of feel I got was that they were all quite comfortable that they hired the best person in each competition. They were quite strong on that. In terms of sense of feel, I do not think they were discriminatory. I do not think they set out to discriminate against people.

Mr Velshi: Would you go one stage further and say that Mr Anand should not have resigned, in that case? I believe that his resignation was based almost solely on the practices of discrimination, which blew up into headlines over—

Mr Gordon: I do not know why Mr Anand resigned. The difficulties I find in here—there are other difficulties as well. I think there was probably a—I cannot speak for Mr Anand. Who knows what was going on in his mind?

Mr Velshi: I thought that was what you were going into.

I am not sure which of you said—I think it was Mr Amin—that notes are important if an applicant fails a competition; that applicant has a right to know why he or she has failed. Is it common practice that an applicant can come and ask for reasons, and does that applicant ever get those reasons?

Mr Gordon: You should ask. You are allowed to ask.

Mr Velshi: My experience, with people who have come forward to me

asking for reasons—I have also been told by senior civil servants through my ministries that these are confidential matters.

Mr Gordon: Dear me, no. We will not do a comparative analysis for a candidate because that does get us into comparing one candidate to another, but we regularly encourage people to come forward and ask, "What was it about my presentation? What was I lacking?" On a sort of individual comparison, that material should be freely coming anywhere in the public service.

Mr J. B. Nixon: When are agencies, boards and commissions of the government required to establish and fund an equity plan by law?

Mr Gordon: There is no mandated legal requirement, to the best of my knowledge. There is no legislation that requires employment equity plans. There has been a mandatory requirement to file what is called a strategies for renewal plan, which has an employment equity component to it. To be quite frank, I am not sure if agencies are caught up in that reporting requirement. I think the commission probably was, but it would have been reported as part of probably the Ministry of Citizenship at the time.

Mr J. B. Nixon: To your knowledge, were they delinquent in any filing?

Mr Gordon: Not to my knowledge.

Mr Velshi: Going by the code that you said senior civil servants have in employing people, what has happened with the Ontario Human Rights Commission is that everything is blown out of all proportion and suddenly a committee is set up to look into it, to investigate it. As Mr Curling said, is there any way of preventing this happening in future, not only in the Ontario Human Rights Commission but in the civil service generally?

I am pretty certain you are probably aware of the level of frustration in the visible minority community at all levels: the entry point, the upward mobility and the staffing of senior positions. How do we avoid this in the future? Here we see a man like Mr Anand, who has resigned. I thought I was quite comfortable knowing that he resigned because of his practices of discrimination, and suddenly I discover that that was not the problem with him. How do we solve this problem in the future?

Mr Gordon: I think the way we are managing it within the Ontario public service now makes some sense. The secretariat is moving towards making ministries make firm numerical commitments instead of producing paper that speaks to motherhood issues: "We will endeavour to" and "We will strive to" thus. They are asking us to come forward with some hard numbers. Within the Ministry of Natural Resources we have just been through that exercise. We have had to commit to the secretariat that we are going to move certain population groups, increase the representation by a fixed percentage by a set target year.

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Mr Philip: That leads nicely into my first question. As we have listened to you this morning and as we read the report, we find that there are a number of systemic problems at the commission which you have identified and indeed that have been identified to some extent by previous studies, and it appears that no action was taken or inadequate action: a fuzziness in the role distinction of different departments and different key executive officers; inadequate documentation in the process of selecting applicants;

revolving-door interviewers; failure to provide an effective affirmative action process at that point in time; failure to have clear job descriptions and indeed changing the job descriptions during a competition; irregularities in not interviewing persons whose qualifications on paper would indicate that they should have been interviewed, since they seemed at least to have qualifications that would be similar to those required under the job description.

One of the major complaints you have is the failure of any adequate evaluation process. I wonder if you would elaborate now what you see the evaluation process should be in this instance, in this commission, to eliminate those problems which I just summarized, that you have identified.

Mr Gordon: I do not remember making a conclusion about evaluation process. I am a bit confused about where that goes.

Mr Philip: Could counsel help me?

Mr McGarva: If I can be of assistance, I believe it was Mr Amin who recommended, in terms of reporting to the public and possibly to this committee or to the Legislature, that evaluation methods be established and—

Mr Amin: How do you know you are doing a good job? I find it very difficult to get very prescriptive about this, but I believe some of that has started. It had started when we were there. One of the things that was happening was that the compliance unit and the legal unit were getting very close together. There was a visible trust from the legal to the compliance unit; they were becoming very supportive. As you would appreciate, that is the guts of the organization: dealing with the complaints and handling the complaints. I think some of that had started.

I think what needs to be done also is to bring about a 1989 operating manual, appropriate training of the field officers, and making a conscious effort to develop the field officers to a high level of skills and expertise, so that cases heard in the north, where you have to consider issues of isolation, native peoples and what not, will have some consistency and will continue to have consistency with the cases heard in the south.

I think there needs to be a look at the number of unclassified staff they are having, and stabilize the workforce. As you know, they lost a number of very experienced individuals to other programs in government, like employment equity and the Ombudsman's office, I think. So there is quite some need now to rebuild esteem, to regroup and to get the morale off the ground. When we were there, as we said, it was very flat; it was just not to be seen at all.

I think there has to be a conscious effort by all the senior staff to work with the field and to win back the field officers. We got the distinct impression from the field officers at the time that they felt they were quite isolated from the head office, and I think some of that healing of the wounds has got to be done before they can get back to a higher level of productivity.

Mr Philip: So the evaluation would be a combination of training, evaluation, community development sort of model, rather than what we would consider to be a more objective audit type of model of evaluation, that is needed at this point in time.

Mr Amin: These are all components of evaluation: reporting,

monitoring, how you know you are doing an effective job, the forms you fill out, the time it takes to get a case and what is a case, what is an inquiry; all those are elements that go into the whole issue of evaluation.

Mr Philip: I wonder if I can get into an issue which I have raised earlier. I have the Public Service Act now in front of me. You had indicated that there was some discussion for certain types of positions not to follow the Manual of Administration, that this authority was under the Public Service Act. I am wondering now if you can point out to me whether you are talking about section 5, section 8. Where is the authority to deviate from the Manual of Administration in hiring practice?

Mr Gordon: There is a broad brush under the Public Service Act; I believe it says that deputy ministers may, with the permission of the commission, appoint to the public service, some such—

Mr Philip: It says, "The commission may exclude any position in the classified service from that service for such period as it may determine." Section 8 says, "A minister or any public servant who is designated in writing for the purpose by him may appoint for a period of not more than one year on the first appointment and for any period on any subsequent appointment a person to a position in the unclassified service...."

Mr Gordon: That is the unclassified service.

Mr Philip: Is that what you are talking about?

Mr Gordon: No. I am talking about just the general appointment authority under the statute that just says that subject to the approval of the commission, the deputy minister may appoint; some similar turn of language to that.

Mr Philip: Perhaps you can find that for me later. Would you not agree that any such use of discretion would imply that there would also be reasons for using such a discretion, that the Manual of Administration is there for the general efficient operation of government, and that the onus on anyone exempting himself from using the process of the Manual of Administration would be to document—and it would be prudent to have something in writing—the reasons at that point in time for not following it?

Mr Gordon: The manual does address the issue of competition waiver. It spells out circumstances under which competition waiver can be used, so that was the point I was making. The presence of competition waiver is what distinguishes management recruiting from bargaining unit recruiting.

Mr Philip: Was it your feeling that there was any documentation available to you or that could be produced by those that waived from the Manual of Administration to substantiate: (1) that they thought through, that they were violating the Manual of Administration or that they were deviating from the Manual of Administration; and (2) that they had thought through the reasons why they were deviating from it and had documented and put something in writing as to why such a deviation was necessary?

Mr Gordon: We are sort of mixing apples and oranges. They committed to a competition process, so they did not use the waiver. They were involved in running competitions. Once having committed to following a competition process, it is that competition process with which we found some flaws, but they are enumerated in the report.

Mr Philip: They waived from the competition process as outlined in the Manual of Administration.

Mr Gordon: We are tying ourselves up with lousy personnel jargon here. We call "waiver" the specific conscious decision not to run a competition. That is a waiver. What they have done is they have not followed the competition process properly.

Mr Philip: Having opted not to use the waiver, is it your opinion that they were compelled to follow the Manual of Administration with regard to how a competition is conducted?

Mr Gordon: They should have adhered to the Manual of Administration.

Mr Philip: And they did not do that?

Mr Gordon: They did not do it in its entirety; that would be fair to them.

Mr Philip: There are a large number of items in the Manual of Administration related to—

Mr Gordon: Exactly. In fairness to them, we did mention in the report that there is a page of areas where there is significant compliance.

Mr Philip: Would you agree that a major area of compliance is: (1) that there has to be a clear job description; and (2) that the person should be hired to the position according to how the job description is written and not according to some other description which is unwritten or in someone's head?

Mr Gordon: Yes, and that would be consistent with what we said in the report. We felt that should have been begun anew.

Mrs Marland: I have a very fast supplementary to Mr Philip's questioning. If you are into a competition mode or a noncompetition mode, does changing the job criteria, as they did for the director of policy research, become a factor?

Mr Gordon: I think it should have become a factor, yes. That is what we say in the report, that they should more properly have begun anew; language like that.

Mr Philip: That was an excellent supplementary. It was also my last question.

The Chairman: The committee will recess now until 2 pm sharp. We have our first delegation then, and I would appreciate it if the committee members could be here so we could start at 2 o'clock sharp.

The committee recessed at 1220.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES
ONTARIO HUMAN RIGHTS COMMISSION
TUESDAY 3 OCTOBER 1989
Afternoon Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

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Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Curling, Alvin (Scarborough North L) for Mr South

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Farnan

Smith, E. Joan (London South L) for Mr Miller

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

McGarva, Bernard, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Canadian Council for Racial Harmony:

Bhaduria, Jag, Executive Director

From New Canada:

Syed, Hasanat Ahmad, Editor and Publisher

From the Urban Alliance on Race Relations:

Radford, Benjamin, Co-ordinator

From the Federation of Race Relation Organizations of Ontario:

Head, Wilson, President

Individual Presentations:

Ryan, Major Patricia, Officer of Salvation Army

Persaud, John

AFTERNOON SITTING

The committee resumed at 1407 in room 151.

ONTARIO HUMAN RIGHTS COMMISSION (continued)

The Chairman: I call the committee to order. We are dealing with delegations. I believe we have four that have been allowed half an hour each. I must bring it to the attention of the presenters that the half-hour is a maximum for your total presentation and questions, and there will be no time allowed over that unless approved by the total committee. I am issuing to you that you have a total of half an hour. Mr Bhaduria of the Canadian Council for Racial Harmony, you may proceed.

CANADIAN COUNCIL FOR RACIAL HARMONY

Mr Bhaduria: It is my pleasure and honour to present to you a brief on behalf of the Canadian Council for Racial Harmony, an organization that has been active in the area of race relations, racial discrimination and human rights since 1974. I will keep my remarks short, although there is a lot of material here, and I will leave the last 15 minutes for questioning.

I have submitted two documents. One is The Ontario Human Rights Code: Myth versus Reality. The other one is a big document, 150 pages thick: Death of Human Rights in Ontario: A Deep-rooted Conspiracy. The latter of the two documents was written in April 1986 and it was presented at a seminar held to protest the workings of the Ontario Human Rights Commission, the subject body that is being addressed today.

Let me draw your attention to some of the salient points of my brief. On page 3—I will not read it out for your benefit. I will just mention the pages that I will be referring to. In my introduction, having read most of the human rights reports, materials, books and documents that have come out and been published in Ontario since 1967, and having been involved in the community organizations very actively since around that time, some of our experiences—when I say "our," I mean the community's experiences; the community I refer to is the south Asian community—are good, some are not too good and some are outright painful. In that vein, I have produced here a background that the Human Rights Code is basically a myth as far as the visible minorities are concerned.

On page 3 I have outlined several things we believe the Human Rights Code was never intended for:

- (a) Serving a vastly multicultural and racially diverse society that Ontario has become;
- (b) Counteracting personnel managers' biases and ingrained prejudices;
- (c) Eradicating the inherent resistance of the dominant community to treat dissimilar people with respect and dignity and to give them their proper place in a multiracial society;
- (d) Overcoming firmly held stereotypical beliefs of public sector personnel managers and top administrators that racial minority applicants are far less competent than their white counterparts for professional and semi-professional jobs;

(e) Dealing with the seniormost administrators of public institutions with unlimited financial resources who are able to thwart any human rights action through lengthy and ineffective quasi-judicial processes; or

(f) Matching the wits of sophisticated but bigoted employers.

Having said that, I would like to point out that the Human Rights Code and the commission have succeeded in certain areas. For example, in the provision of services I think it has done its job marvellously. My personal experience is that the community does not face any discrimination repercussions or any impediments in the provision of services publicly. For example, we can say public transportation, going to a hotel, restaurant or shopping, is one of the perfect examples of racial harmony that exists in Ontario.

On a decreasing scale, there are other areas where public housing is a matter of concern where visible minorities are not considered at par with Caucasian applicants. The extreme bitter end is the employment situation in the public sector. When I say "public sector" that means in public institutions. I am rather saddened to report that the situation in the private sector is far better compared to any public institution we know of in Ontario.

When I look at some of the major banks, the Royal Bank, the Canadian Imperial Bank of Commerce and others, we find there are many office managers, accountants and senior administrators who are under no restraint to accord equal employment opportunity. But when you look at the public bodies—for example, let's take the very place where we are sitting, the Ontario public sector: out of over 500 deputy ministers, I can count the names of two or three who would be considered racial minorities. That is less than one per cent.

In a society that is nearly 10 per cent in Ontario and nearly 20 per cent in Metropolitan Toronto, this kind of situation is disgraceful, to say the least.

Let us look at some of the public parties, the boards of education. The Toronto board—which has called itself the pioneer of human rights, but my definition of them is probably the most racist board of education besides the Scarborough board north of South Africa—has been spending millions of dollars in bringing equal opportunity programs, and all it has done is appoint one principal for high schools. I call that principal, a good friend of mine, a \$20-million man, because that is the amount of money the Toronto board has spent on getting one principal at the high school level after 15 years of equal opportunity programs. The situation in the Scarborough board is even worse.

If you go down to some other public institutions, like the community colleges, the situation is even worse. Of the total teaching faculty two per cent is racial minority. After nearly 20 years of equal opportunity programs, Seneca College, Centennial College and other places can only afford to hire two per cent of visible minorities in their teaching staff. I call it an outright disgraceful situation that exists right here in Metropolitan Toronto.

We have mentioned a few things here: some myths we should be looking at; the work of the commission. Basically, the work of the commission emanates from the code. We have put four propositions here; it begins on page 6. These are what we have called the great Canadian myths.

Myth 1, slightly down the page: "The Ontario Human Rights Code is the best human rights legislation in the western world." We have very serious reservations about such statements, because out of 100 per cent of all the complaints, nearly one per cent of the complaints are sent to a board of inquiry. If this kind of success rate existed in the airline industry probably one out of every 100 planes would be landing. If this were the case in a hospital, one out of every 100 people having operations would survive. That is the kind of comparison we can make.

Why is it that one per cent of the cases are referred to the board of inquiry? Nobody has ever answered this question, including all the ministers of Labour from 1973 right up to our present Minister of Citizenship, Mr Wong.

Myth 2, on page 8: "The code provides a remedy for discrimination." As a matter of fact, in one of the recent cases, Majestic Electronic Superstores, the president was forced to pay \$300,000 and his statement was very clear. "Probably it will cost me," and now I am quoting him, "much more than \$300,000 to hire a lawyer to keep the case going and it is much cheaper to pay the people \$300,000." If that is the view of one businessman, I do not know how many others there are who feel the same way.

One of the problems we see is clause 33(1)(b) of the Ontario Human Rights Code which allows the commission to dismiss a complaint without any hearing at all. That is probably the worst deficiency in the code. In spite of overwhelming evidence of discrimination, the commission has dismissed hundreds of cases without giving the complainant a proper forum. This is called the initial stage of inquiry.

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We believe that irrespective of any reasons whatsoever, every complainant should be given a fair and full hearing before an independent and impartial body. The procedures that exist now in the code do not allow that. I can think of two complainants who have committed suicide because of the human rights cases. There are three who have gone through mental institutions and scores of others who have resigned from their jobs under pressure. It is a very painful situation.

On page 10 we have described myth 3: "The Human Rights Code provides remedy at no cost to the complainant." If I remember correctly, if my memory serves, probably in 1976 or 1977 in the same room, this was one of the consensuses of the committee then looking into the same problem, that one of the best advantages of the human rights commission is that it provides a redressing mechanism without any charge. In our brief we have described what happens in actual cases.

Whenever a person goes through a hearing, which is in one per cent of the cases, one must have an independent lawyer of his or her own. They do not come cheap. Any medium-competent lawyer costs about \$1,200 to \$1,500. Considering the length of human rights cases, going on to five or six years, it could cost between \$50,000 and \$75,000 to the complainant. I have described two cases. These are real cases, they are going on now and the cost is over \$50,000 for the legal representation alone.

The last myth which I would mention, on page 12, is that the Human Rights Code protects the complainant. In some cases the complainant does not agree with the dismissal of his or her case and, since there is no other option to appeal against biases of the commission or the investigator, is

forced to seek the legislative mechanism, which is going to a judicial review. In my opinion, to date no judicial review has succeeded, although the first one I remember was in 1971. For 18 years the decisions of the human rights commission have been upheld by all the judges. Whether it is their belief that the commission is doing a great job or it is their personal preference not to rock the boat, we do not know. But that is an unfortunate situation, that even after spending \$5,000 to \$6,000 complainants have not succeeded.

Last, we have suggested some recommendations on page 15. Mr Chairman and honourable members of the committee, this is the fourth time we have come before similar committees. We have made dozens of representations before the federal government and provincial governments, to Conservatives and, for the second time here, the Liberals. To the victims, they are all crooks, because they do not listen, they do not do what the victims want. If this committee is to do something, I would beg you again—it makes me cry, it makes me emotional when I see people's problems not being heard. There are people out there crying for justice. It should be done. A \$5,000 fine is not a fine for human rights. I would beg you, please look at these recommendations:

1. Allow a person to go to court. If one is unhappy, Bora Laskin said, the code provides an exhaustive remedy. It does not. It provides nothing for those whose cases are dismissed. He should be allowed to go to court. If he has a complaint, let him spend his own money and go to court.

2. The penalty should be increased to \$1 million, as it has been done in the cases of the environment and pollution. In the case of individuals, they should be increased to \$500,000. If a case of racial discrimination is proven, the person should be hit and hit hard in the pocketbook. We believe that until this is done, the situation will remain the same.

3. In the public sector, where the government bears the burden of all the court costs, let the individuals fight the case. Then at least they would not have the security of the big organization—the Ontario government, the Toronto Board of Education, the University of Toronto or the University of Western Ontario—footing the bill of \$500,000 or \$1 million. Let the people who are charged foot the bill in all cases and be held responsible.

I went a little bit over my time. There are only five minutes. I have to leave very quickly. It does not leave us much time but I am open for questioning.

Mr Velshi: I must first of all thank you. It is an excellent presentation. The personal side of it was important for me.

Just for your information, this morning we were listening to two people. A report was prepared by Karim Amin and Mr Gordon on the Ontario Human Rights Commission after all these perceived problems took place. My very specific question to them, after reading the report and questioning, was whether they perceived any discrimination in hiring practices at the Ontario Human Rights Commission. The very clear answer I got was no. This is on record and it can be seen.

You went a little further and talked about civil service discrimination. How does one prove it? When you say, "Let it go to court," the Ontario Human Rights Commission decisions in court have been upheld, those few that have been taken. Why do you think the court will make any other decision if somebody goes directly there?

Mr Bhaduria: I would like to mention here one of the great legal writers, Stanley De Smith of England. In his Constitutional and Administrative Law, he has mentioned very clearly that the courts normally would not go against the findings of an administrative body and he has said it time and time again in his treatise on administrative law.

What we are saying is, from the very beginning do not involve the commission. In that case, one would have a reasonable chance of proving the case in a process called discovery. So the commission is not involved. The commission, basically, is very hard-pressed with finances and it does not have competent investigators. The investigators might themselves be biased. If they see somebody whom they do not perceive to be right, then they would generally reflect the views of the majority community.

Our suggestion is that by leaving the commission out altogether, we would go through the legal process that allows for discovery, which is under oath. None of the investigation done by the investigators of the commission is under oath. I think it is a licence to lie as much as you can until caught. This is exactly what Richard Nixon did. Until he was hammered by the Senate, he kept on lying and lying.

Mr Breaugh: I have a couple of quick questions. You have submitted two documents to us. One calls for a full judicial inquiry into the working of the human rights commission and the other one does not make mention of it. What is the position of your organization on that?

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Mr Bhaduria: We still take the same position. There must be a full judicial inquiry into the working of the commission. To answer Mr Velshi's question, there is discrimination in the Ontario Human Rights Commission, no doubt about it, but that is a small part of the big machinery. Even if the Ontario Human Rights Commission were to employ all visible minorities and no caucasians, which would be extremely unfair and undemocratic to say the least, it could probably hire 150. What happens to probably half a million others who are outside? Therefore, we have to address the question, not only the commission itself; there are millions of other jobs that are affected by the commission's work and unless we have a full-fledged judicial inquiry, we will be doing a bandage job.

Mr Breaugh: One other quick question, because we are kind of pressed for time here: You are advocating, as many do now, a division of responsibilities and you are basically putting the argument that you would rather go to court in terms of hearing a complaint than go to this commission. I am interested that in one of your recommendations you have kind of an either-or in here. I would contend it is quite reasonable to make the argument, "Let's go to court and do it there, where it is under oath and all of that," or use the commission, but you cannot do both. You have to make a distinction. Could you just quickly elaborate a bit on that.

Mr Bhaduria: We do not want employers to be hammered from both sides. There could be some people who feel: "Let's ride on two horses. First go to the commission and when they dismiss it, then go to the courts." We are vehemently opposed to that decision. Once someone says, "Okay, let me go to court and I can prove my case better," go to court, but it forecloses all redress back to the commission. We would be totally opposed to that. That means a double whammy against the employer.

Mrs Marland: Thank you very much for your presentation. I appreciated your frankness, especially being so direct about the private sector being better than the public sector. I certainly had not heard that before.

Where you are saying that these complaints should be heard in the courts, just to go a little further, from the last answer, knowing now how long the process has taken through the OHRC route, are you not concerned about the fact that all cases in courts now take so much time that by the time some of these complaints may be heard, people are going to be out of their new employment opportunity, or they may be out of money or they may be in any number of circumstances because of the delay?

Mr Bhaduria: To answer your question, we researched this problem and we found that the average time taken by the commission is four years, and it could go into the fifth year before a person gets a job or his case is resolved. I am not saying conciliation; that takes about two years. The investigation goes on. In the courts, when we looked at some of the human rights cases, not human rights racial discrimination but some similar cases, since subsection 15(1) came in the average case, unless it went to the Supreme Court of Canada which we believe is probably one per cent or two per cent, took less than two years. They went first to the county court, then the Supreme Court and at the most the Court of Appeal level. It took on an average between two and two and a half years.

Mrs Marland: Half the time.

Mr Bhaduria: That is half the time, and courts put—within 30 days, either you prove your case or it is dismissed against the employer. There is no such mechanism at the OHRC. The employer can really tie down the commission by going to a judicial review on every point. They say: "No, we do not believe in you, what you are doing. Let's go to judicial review." Every three months they can go back and tie up the whole case for three years simply on judicial review.

If there is a judge sitting there, he says, "Look, either you prove the case and we give you half an hour, or you are out." There is no such thing as: "We do not agree. Take the case back to judicial review," and it is tied up for six months. If there is a judge listening to the case after discovery, he will say: "The whole thing is here. What do you want from me?" and he will make the ruling right then and there after a recess. So we are not tied down for six months, going back and forth.

There are two or three cases we know where the cases have been tied up for six years just because of this trick by the Toronto Board of Education. We do not think the chairman of the inquiry has the jurisdiction. The chairman says, "Well, I have," and they say: "No, Mr Chairman, you don't. Let's go to judicial review," and a judge then decides yes or no, but that takes six months.

The Chairman: Our time has elapsed. We want to thank you appearing before the committee today.

Mr Bhaduria: Thank you very much indeed for giving me the time to present the case.

The Chairman: Our next witness is Hasanat Syed, editor and publisher of New Canada. Have a seat, please. You have a half an hour in total. Take

whatever time you like. It would be nice if you would leave some questions for members. We usually get some interesting scope. However, the time is yours; you may use it as you wish.

Mr J. B. Nixon: Just before Mr Syed begins, it might be interesting to note that the new chairman of the Ontario Human Rights Commission is in attendance, Catherine Frazee.

The Chairman: I am sure all members have recognized that the new chairman is here.

NEW CANADA

Mr Syed: I have not prepared any exhaustive sort of submission, as has been done by my colleague Jag Bhaduria, but I have already submitted a small list of recommendations and suggestions which are probably being distributed, along with a copy of my paper in which I carried some comments on the working and composition of the Ontario Human Rights Commission.

I will not touch upon those points that already have been covered by the earlier witness. I will be confining myself only to a number of points that I believe need the immediate attention of the standing committee.

The first point I mentioned in the recommendations is that in my perception the Human Rights Code of 1981, as amended in 1984 and 1986, needs further amendment. The reason is that when the Human Rights Code was codified in 1981, 1984 and 1986, it did not take into account the conditions or situations prevailing in Ontario. During the last three years the complexity and composition of Ontario have largely changed. You will find that the people from the Asian community especially constitute almost 20 per cent in Toronto and 10 per cent of Ontario.

One of my main suggestions is that there is one area which has not been covered by the code. That is what I believe is a code of conduct; that is, there has to be some line drawn where the people should stop spreading hatred against other communities, which probably is now prevalent largely because of the change in the composition of the people living in Toronto.

I draw your attention to clause 28(d) of the code which says that the Ontario Human Rights Commission is "to develop and conduct programs of public information and education and undertake, direct and encourage research designed to eliminate discriminatory practices that infringe rights under this act."

To my knowledge, the commission has not been able to develop any such programs. Their responsibility is not merely to investigate and go into the question of what is happening. The people are complaining. They have not delivered their responsibility and duty in respect of the function as indicated in the code, which I read, and that is clause (d). Then in clause (g) it says "to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems."

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The problem here probably is that (1) the human rights commission is staffed by part-time commissioners, (2) it lacks funds and (3) it is engaged mostly in the investigation of the complaints it is receiving. But what they have ignored, in my perception, is that they have not been able to discharge the functions that have been defined in the code itself.

When I raised the question of some of the grounds of hatred, I particularly referred to a thing, a pamphlet. I could not get hold of this in greater numbers. I can leave it with you.

What is happening is that I belong to a community that is facing persecution in Pakistan. They are being persecuted under various laws and various things and are being denied their human rights. What is happening is that quite a large group of our people, who are moving as refugees or emigrating to other countries, are facing such sorts of literature being distributed, being produced in Toronto, being distributed over here against a community that is largely peaceful.

If I make a reference to the Attorney General's office about this, it will only say, "Look here, this doesn't affect the provisions of the Criminal Code and we cannot simply step in in a situation where we cannot successfully prosecute a person." If we approach the human rights commission, it says: "We are already busy with areas which have been defined in the code. We do not come into this area." That leaves a very large area uncovered.

The third thing, which I mention in my own submission and suggestions, is that I believe the human rights commission itself has to be overhauled on the higher level. I am very happy that Catherine Frazee has been appointed as chairman. She may probably bring some new approach or new identification, but I suspect that some of the part-time commissioners, or whatever they are, have been appointed on I do not know what basis. Some of them are architects; some of them are from different walks of life. I do not know whether they are fully conversant with the type of work they are handling.

I would strongly suggest that appointment to the commission should not be motivated by patronage, by political sort of window-dressing things. It has to be done basically on merit, and once people come in with merit and dedication, they probably will be able to put the necessary amount of zeal and dedication to the execution of the work of the human rights commission, which was actually constituted for that purpose.

What I am saying, and what my perception is, is that we have to address the problem of the composition of the commission in such a way that people who are really—there may be people who may be competent, but what we require at the moment is dedication, zeal and enthusiasm to deliver the goods. If the people are not that dedicated, we will not get any results out of that.

I also believe that there has been a certain amount of red-tapism, because I have got an annual report of the human rights commission with me and I find—I am looking at the French side. This is page 11, which deals with the complaints unit. It was indicated in this report that the commission received 1,734 formal complaints and out of this it dismissed 161, refused to entertain 33, settled 1,009 and nothing has been asserted as to what happened to the other 389 cases. Over the period of one year the disposal of only, say, about 1,400 cases does not reflect the sort of work coming out of the commission, which has 10 part-time commissioners and of course a very large staff of

investigators and all these things. What has to be done is that there has to be a certain amount of dedication to work which I believe is not there.

Lastly, I have also made a recommendation about the setting up of a hotline. This probably is already in existence in other provinces. I am not aware whether the Ontario Human Rights Commission has a hotline established for people who would like to get easy access.

I am now open to questions, if there is anything. That is briefly my presentation.

The Chairman: We have about 22 minutes left, so we will divide it equally among the parties. I have one question. You indicated that the appointments should be based on merit. What would you say if the most qualified people were of one nationality who qualified based on merit? Would you believe that to be fair without a visible minority being one of them?

Mr Syed: I could not follow your question.

The Chairman: You had indicated that the appointments to the commission should be on merit.

Mr Syed: That is right.

The Chairman: And if all the top qualifications were of the same nationality would you agree with that?

Mr Syed: I will not agree; if I left the perception that merit alone is the only consideration, probably that is a wrong impression, because it has to be very properly represented among the various groups. There are people who are competent in one particular group, and that particular group may not be able to believe, for some reason, the amount of justice that is needed. That is the reason that in addition to merit there has to be some proportional representation of people from different groups.

You raised a very good question. For instance, so far I have not seen a single Muslim Canadian appointed to the human rights commission. There have been two Indian Canadians who have been appointed; there have been a number of other appointments from various things. I have not seen a single Muslim Canadian, and I believe that Islam brought a human rights charter some 1,400 years ago, and people from that group can bring that dedication which I am now actually seeking at this hearing.

The Chairman: Thank you. I allot six minutes to each party.

Mrs Marland: In your recommendation 4, "The commission should be directed 'to clean' its own house," and then in brackets you have, "Physician heal thyself": Could you elaborate a little more on that recommendation?

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Mr Syed: I think there are a lot of opinions that already appeared in the Star. I did not mean to indicate the whole thing. What has happened is that during the period of the previous commissioner, who happened to be from a visible minority, a number of appointments to senior positions were made from a dominant community. It is very easy to say that since the appointments were made by a person who belonged to a different group and so on, where lies the harm? When I say this thing, I am pointing out the fact that the commission

itself is going to deliver something. If the commission itself is plagued with the same problem, how can it deliver the justice which people are looking for from it?

Mrs Marland: So what you are saying is that it is very difficult, based on what you know, for the Ontario Human Rights Commission to carry out its mandate of responsibility province-wide if within its own organization it is not exemplary in its own practices.

Mr Syed: That is right. That is absolutely right.

Mrs Marland: Do you have any suggestions about how that could be managed? You have mentioned the hiring of the six or seven directors at high-level administration that took place without any visible minorities, and certainly we are aware through the Amin-Gordon report and other sources, probably the media, that there was a lot of question about the fact that there were eligible candidates for those positions. There were some really wonderful individuals.

Mr Syed: I am still in fear to find a proper answer, but what I believe is that the previous commissioner, being very good with some ministers, probably liked to return the political favour which he received himself. Because of that, there have been appointments like that. That is the reason that if you are wide political appointments, political patronage, then people who are appointed basically on merit—not only on merit, as the chairman pointed out. If we go only for merit there may be some perception that probably that merit is confined to a particular group, whereas that merit can always be available in other groups also.

The only problem is that the person who is taking a decision at that time is not open to that sort of perception. He only finds a particular group of people as the right type and ignores the other groups altogether. In that situation, whatever the politicians say, "We are committed to the provision of full employment and equity in everything," things keep on happening. There is always a problem of the people who are hiring the persons. They are not open to the political approach or political ramifications.

Mrs Marland: When you look at what has happened with the former administration—that encompasses everybody; I am not pointing a finger at any individual—when you look at what happened with the former situation with the Ontario Human Rights Commission and the irony that, based on the Amin-Gordon report, the commission itself—the report is a seething indictment of the commission in terms of its own hiring practices.

We certainly are aware of a black female who applied for one of those jobs, I think director of policy, who was very well trained and experienced and certainly very eligible for that job. What recourse would that individual have when she is applying for a job in the OHRC, does not get it—who does she grieve to?

Mr Syed: There is nobody, because under the code you have to go to the human rights commission. If that particular lady goes to the human rights commission, it is bound to defend its own decisions. It is a very paradoxical thing. You are absolutely right, very paradoxical.

Mr Philip: I find the most interesting idea that you brought to us is item 2, which is that the basic rights enshrined in the Charter of Rights

have not been covered in the code, especially the protection against hatred and malicious propaganda against a group.

Mr Syed: That is right.

Mr Philip: Indeed, the major human rights complaints that I get are against groups that are being pillaged by stereotype propaganda, be it coming in from the United States, in many cases, or from any parts of Canada. It might well be that such a change would also give us an opportunity to deal with some of the most offensive type of pornography that stereotypes women.

It seems to me that there is at least one other province that has attempted this. Am I correct? Do you have any information on where this may have been used elsewhere?

Mr Syed: No, I cannot give you, but I suspect—

Mr Philip: I am not sure whether Manitoba was talking about including this or whether it has already done it.

Mr Syed: I am aware of the Canadian Human Rights Commission. The reason I gave you my paper is that you will find that the Canadian Human Rights Commission has been exerting in a number of areas where our own human rights commission is not operating at all. I would not be able to answer the question you raised, because I am not aware very much about the human rights activities in other provinces.

Mr Philip: Mr Chairman, it might well be something that research could look into, because I think it is an interesting idea that we should at least consider and look at, to see whether it is practical under our present code to look at that possibility.

You talked about the appointment of members to the commission. My bias is that commissioners should be of a wide variety of backgrounds, of a wide variety of expertise, and the most important thing that somebody in a tribunal should have, or indeed even a justice of the peace should have—

Mr Syed: I totally agree with you.

Mr Philip: —is not necessarily a particular training such as a legal background, but rather be people who are fairminded and have common sense. My question to you is: How do you codify that so that when the powers that be are appointing commissioners, they have some criteria? I do not know how you put common sense down in a way that you can screen people for that. You obviously can screen people, but you do not want to have people who are stupid or insensitive or that kind of thing. How do you measure that?

Mr Syed: My suggestion will be that the appointments to the human rights commission, which is a very sensitive commission and a very sensitive area, should not be left with the Office of the Premier, but rather dealt with by the standing committee on government agencies, because as a body, if it looks into it, that political interference may not be there. That patronage will not be there, because there is diversification. All the parties are represented on the standing committee, and they probably will be able to put more input into the whole thing on how the selection is to be done.

If it is left to the ruling party that all these things are to be done—it is understandable that the ruling party may do the appointments of

all its agencies. But this particular agency, which is a watchdog even of the government of Ontario, should have some other method of selection. Commissioners may not feel shackled. They have been appointed for a particular thing. Probably they may not be having that independence or feel like that.

Mr Philip: It is an interesting suggestion, because the Ombudsman in at least one province is appointed by consensus, not by majority vote of a committee of the Legislature. To date, we have not been able to persuade the Attorney General (Mr Scott) to go that route, even with the chief Ombudsman in Ontario. So, I do not know whether the government is prepared to accept your suggestion on this, but I think it is a good idea. Thank you.

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Mr J. B. Nixon: I have just a couple of questions following up on some of the questions Mr Philip asked. I agree with you and him that the nature of the appointments to the commission are very important, and we are looking for people with a wide variety of skills and life experience and background. I find your suggestion that it be done by an all-party committee of the Legislature interesting.

None the less, I am curious as to what criteria we would be looking for. First of all, let me just say by way of a caveat that I do not agree with you at all that the present commissioners are there on the basis of patronage; pure patronage, diluted patronage or otherwise. We may disagree on that; that is not the issue I am concerned about. What are the criteria we should be looking for?

Mr Syed: I think the basic criterion is community service, that the people have been involved in their own communities or have been involved in the welfare of the large number of communities. Currently, as probably you have your own opinion, the commissioners as such do not, to my perception and from whatever information I gather from the annual report, have any community service background. They should have been involved for a long period of time in dealing with their own community and also dealing with the other groups living in Ontario. Unless I have a knowledge about Hungarians and Polish or Portuguese or people from Sri Lanka, I would not be able to understand the complex nature of the work.

Mr J. B. Nixon: With respect, I would say that it is my understanding, which is obviously different from yours, that the present commissioners do have a great deal of community experience. I just want to put that on the record.

Following up on your comment, how do you define those communities? How many communities are there in Canada? If we are going to appoint, say, 15 commissioners or 12 commissioners or 10 commissioners, I am sure there are more communities than 15. There are many, many more. There are the geographic communities, there are the communities of culture, race, religion, sex, vocational association, whether it is a profession or a trade union.

How do you ultimately say these communities shall be represented, these communities may be represented and unfortunately some communities will not be represented? Ultimately, whoever is making the decision is going to unfortunately have to say, "We have only got 15 spots."

Mr Syed: To answer that, the thing is that you have to first visualize from where the large number of complaints on human rights are

emanating. Is it from the dominant group, is the dominant group involved in filing complaints to the human rights commission? No. If the dominant group is not filing complaints against the commission, the dominant group should not have that much of a share in the constitution of the commission. You have to assess. The report already mentions the number of complaints coming in. It is very easy to survey the nature and magnitude of the complaints coming in. Then you diversify, classify the groups.

You have to make a judicial assessment of what are the groups which we have to select. I will not say that you may select a group which has only, say, about 5,000 people: (1) you are going to select those groups which have a sizeable population in the province; (2) you have to select those groups from where the large number of the complaints are coming in.

Mr J. B. Nixon: One more question. I will be quick. We were just looking at the tables in the annual report of the grounds for various complaints made to the commission—page 36, table 1—and it shows that the largest number of complaints by far, 40 per cent approximately, come from the handicapped. The second largest group come from complainants concerned about sexual discrimination related to pregnancy. Following your criteria, that is where the majority of commissioners would come from.

Mr Syed: You have a chairman who is the civil person, and she probably represents a strong group, a group which has been feeling aggrieved in a way. What I am saying is that the same applies to the other groups where the complaints are coming in. If the complaints are largely coming in from the groups which are not represented on the commission, then you have to examine it. The present composition of the commission is such that the people now on the commission belong to a group from where the complaints are not coming in.

The Chairman: Thank you for coming before us today with your comments and presentation.

Next we have the Urban Alliance on Race Relations, Ben Radford. You have half an hour to make your presentation. You can use part of it or all of it or leave some for questions, but you have a maximum of 30 minutes.

URBAN ALLIANCE ON RACE RELATIONS

Mr Radford: I would like to thank the Ontario standing committee on government agencies dealing with human rights for giving the urban alliance an opportunity to make its presentation. I will try to read, briefly, the document that I think you have before you and then, hopefully, I will open myself up to questions.

Regarding the urban alliance and its concerns: The Urban Alliance on Race Relations was founded in 1975 following a series of verbal and physical attacks on members of minority groups, specifically south Asians and blacks in Metropolitan Toronto. A group of citizens, including members of the clergy, labour unions and concerned citizens of various racial groups came together for the purpose of demonstrating their opposition to these forms of racism. They were committed to work towards the building of a more harmonious and just society. Following several meetings of these groups, the urban alliance was officially launched in July 1975.

In 1981, the urban alliance submitted a brief which contributed to the decisions to amend the Ontario Human Rights Code. These amendments significantly improved the previous code. Today, we believe the suggestions we

are making will continue our work in encouraging the Ontario government to make further improvement in that code. Our recommendations will include attention to improvements in the code itself and in the structure of the Ontario Human Rights Commission.

We are conscious of the fact the the Ontario Human Rights Code made substantive changes in 1981. However, experience and changing public attitudes suggest that it is time to move another step forward in the continuing process of social political reform. First, we call attention to a number of issues which have resulted in a high degree of public dissatisfaction with the commission.

We begin by clearly indicating that we are not among those who want to destroy the commission. We want to see it improved. Our first concern is the frequently lengthy delay in responding to complaints of minorities, but the same complaints are lodged by other groups. For example, if a complaint were to be lodged today, the chances are that the initial investigation would not occur for at least eight to nine months. Some complainants have indicated waiting for more than a year before the initiation of an investigation.

Second, while it is accepted that investigations should be balanced and comprehensive, they often drag on for as much as five years. This is, of course, totally unacceptable.

The role and responsibilities of the commission are equally unclear. That is, the recruitment, selection and responsibilities of commissioners are clearly the responsibilities of the government of the day but could not this process be improved with comment and suggestions from the citizens in various regions of the province?

1510

Fourth, there is a need for more publicity to reporting the initiations and decisions of cases. It appears to us that too much secrecy surrounds the outcome of most cases. The Majestic case was an outstanding exception to this general situation.

Fifth, when complaints are confirmed, awards to victims are too low, particularly in instances of big corporations, to be effective deterrents.

Finally, it appears that more attention should be given to the appointment of adjudicators. Human rights groups have been calling for more careful appointments, including members of minority groups and some changes in the selection and appointment of adjudicators.

We have read with some satisfaction of the intent of the government to increase the budget of the commission by \$3 million. We applaud this decision but are concerned with how it will be spent. If allocated in a manner similar to the past, we doubt that it will make any significant differences in the performance of the commission. It should be noted that additional funds were allocated some years ago but there was little improvement in the efficiency of the commission as measured in time elapsing between filing complaints and final disposition of the cases.

Obviously, some additional changes are required. Only if the effectiveness of the commission is significantly improved will public confidence be restored.

Comments regarding the code: We have some questions regarding limitations of the 1961 code establishing the Ontario Human Rights Commission. First, for example, under subsection 43(2), it is stated that prosecution under the act should not be initiated except with the consent of the Attorney General of the province. Why this restriction? The commission now has its own staff of lawyers and presumably they are competent to decide whether or not a refusal of a respondent to obey an order should be taken to court.

Second, subsection 31(2) provides for the initiation of complaints by the commission. To our knowledge, this provision has rarely, if ever, been used. The utilization of this provision would enable the commission to apply its knowledge and expertise in dealing with potential complaints before complaints are filed. Some evidence already exists to the effect that the majority of potential complainants refuse to file complaints, citing lack of trust in the commission, even though they feel they have been victims of discrimination.

Clause 28(g) also appears to support the possibility of initiating actions against discrimination to identify and to take action against actual or potential acts of discrimination.

Third, while the federal government and some provincial commissions provide for special programs, affirmative action, designed to redress victims of past discrimination, the 1961 edition of the Ontario code does not. Section 15 of the Canadian Charter of Rights and Freedoms provides similar provisions. As a leader in the field of human rights legislation, it seems essential that amendments should be designed to change the present situation.

Finally, our investigations and research suggest that a great deal of discrimination in Ontario is not necessarily based on personal bias and discrimination. Rather, it is based on structural arrangements which effectively result in discrimination against certain groups: for example, height and weight restrictions by some police departments, lack of accessibility for disabled persons because of lack of ramps, restricted recruitment and employment of new workers through the old boy network rather than utilizing systems based on merit selection.

We are aware of the fact that a few municipalities, a few boards of education and some efforts by the government of Ontario are taking small steps to redress this unfair and discriminatory situation. However, these are voluntary initiatives. They are not supported by clear requirements enforced by the Ontario Human Rights Commission.

The former commissioner, however, had prepared a policy statement indicating the intention of moving in that direction. We support that move to focus the attention of the commission towards the elimination of systemic discrimination. The development of a special unit of the commission would be helpful in that direction. I think we are talking about the fact that Raj Anand had initiated, in part, the use of his \$3-million systemic discrimination unit and we support that as not only existing in policy but also existing in the legislation.

I am just going to go briefly through the recommendations.

The Ontario government must be commended for the fact that it was the first in Canada to enact a comprehensive Human Rights Code for the protection of its citizens against unfair and unjust discrimination on a number of prohibited grounds. However, several significant events have occurred since

1961 and subsequent amendments in 1976 and 1981. As indicated above, these include the adoption of the Charter of Rights and Freedoms, the 1982 enactment of the Canadian Human Rights Act by the federal government, the federal government's Canadian Multiculturalism Act in 1987, and new legislation and policies by several boards of education and municipalities. In addition, there has been a new recognition of the limitations of the complaints-oriented method of protecting human rights and a new emphasis of a need for structural change, including a focus on systemic discrimination.

With these societal changes in mind and a recognition of the need to bring the Ontario code up to date, we recommend the following policy and structural changes in the Ontario code and its commission:

1. That the initiation of investigations following complaints be speeded dramatically and that a goal of initiating complaints be less than two months.

2. That increased efficiency of investigations become a specific focus and that, unless impossible because of complexities and nonco-operation, a goal of no more than one year be adopted by the commission.

3. The complexity and sensitiveness of many cases requires a well-trained and sensitive staff; that the selection, orientation and training of staff be reviewed with the goal of improving staff performance in its significant work.

4. Public education and knowledge of commission work requires that information be available; publication of complaints and results of commission investigations should be public knowledge. Public support requires this knowledge.

5. The appointment of boards of inquiry should be more open. The various communities of the province should be given the opportunity to submit names which could be placed on a list for government appointments to boards of inquiry.

6. Consideration should be given to the question of numbers of members of the board of inquiry. We recommend that the boards be composed of three members, of whom at least one should be a nonlawyer.

7. The Charter of Rights and Freedoms permits affirmative action programs to be set up when required, in order to redress historical disadvantages of certain groups. It is unclear to us whether this can be accomplished under the present code. It is recommended that affirmative action programs be specifically spelled out in the legislation.

8. Contract compliance: That contract compliance be specifically permitted in legislation. The least government can do is to demand that its own contractors practice fairness and justice in their employment practices where taxes of all members pay the costs.

9. That the committee recommend that protection of political opinion become a protected right of expression. This right, among others, is protected by the Charter of Rights and Freedoms and should be so protected in Ontario.

10. The right of freedom of speech, protected in the United Nations Universal Declaration of Human Rights and in the Canadian Charter of Rights and Freedoms, should include the right of political opinion. In the absence of overt illegal behaviour, the right to hold unconventional opinions should not

be permitted to subject the individual to unjust or unfair discrimination in employment, housing and prohibited grounds.

11. The protection of the rights of individuals against systemic discrimination requires a level of skill and sensitivity somewhat different from that of investigating individual complaints of overt discrimination. It is recommended that a special unit within the human rights commission be established in order to improve and expand work in this area.

I have just some final concluding comments. It was felt that we had very little time to prepare this brief and that, though we tried to consult many of our board members, the ideas were taken from our long history in working with the human rights commission. Groups need ample time to submit a good submission. We tried our best to bring our ideas as well focused to you as possible, but we feel more time is needed for adequate presentations to be brought because we were aware there were many other groups that wanted to make presentations here. I open myself to questions.

1520

The Chairman: You have 15 minutes, five minutes for each party.

Mr Curling: Again, I want to commend the Urban Alliance on Race Relations for the job it has been doing over the years. Mr Radford, in the last three years you have seen many changes take place on the Ontario Human Rights Commission, such as changes of position and the government's paying attention to them. A lot of politicians are posturing on this and all are hoping for those changes. Would you say that this is for the better or just a matter of changing the furniture around?

Mr Radford: I think that any attention is good for the human rights commission. I hope it is not just mere posturing. I hope that government officials and government bodies such as yourselves see the human rights commission as a very valuable and serious commission within the whole establishment of government; and, because of the dramatic change that is occurring within Ontario—and it is occurring across Canada—that the human rights commission is a valuable adjudicator to many of these issues, that its work has to be taken seriously, and that the funding and necessary resources have to be given to the commission. As well, the commission has to change to meet the needs of a changing industrial, multicultural climate in Ontario.

Mr Curling: I am going to say it more forcefully: What grade do you give it, from one to 10, for these changes that have been happening?

Mr Radford: Speaking on behalf of the urban alliance, right now I think we can give it a good six. I think there is still a vast need for improvement and a need for resources; especially on the grounds of looking at a systemic unit, there is need for improvement and there is drastic need for improvement in the time it takes for a case to go through. The time it takes for a case to go through is a serious impediment for any individual who wants to make an individual complaint. The need for a systemic unit is looking at the structural areas of racism that exist in our society that have to be addressed. Racism is not just I as an individual discriminating against you; racism exists within the structures of society, and those structural changes have to be addressed. There is still a lot of ground to be covered in that area.

Mr Curling: I think I am hearing you say that putting some more money to it could be helpful.

I will ask one more question. You talk about compliance and it is something that has been talked about. The hint here—maybe it is not a hint; it is a direct remark—is that the government itself has a great opportunity to get the practice of fairness and justice started at home. Would you say we have been too slow as a government in getting contract compliance in place?

Mr Radford: Yes. I see that as being very serious. The urban alliance would clearly say that the government has been very lax in that. I do not just say it as a matter of saying let's bring justice to all people, which is quite important; I say it as that we are not using the full skills and dynamics of all the people in Ontario in the workforce and I say there have to be mechanisms. Contract compliance is one of those mechanisms of using those skills and abilities that disabled people, visible minority women, native people and women have. Those skills are not being used. If you just hire white males, you are not using the full potential of your population. The areas of affirmative action and employment equity not only make good human rights sense; they make good business sense.

Mr Philip: On that note, on number 8: Other jurisdictions have legislation that denies corporations any kind of government contract for a period of two years where that particular corporation or individual has been found guilty of a human rights violation. I have advocated that on behalf of the New Democratic Party for a number of years. The successive governments have refused to initiate that.

Would that be of some assistance? We talk about fines and larger and larger fines, but surely there are an awful lot of companies doing business with the government to which just the threat of no government contract for a period of two years would be a major motivator, would it not?

Mr Radford: Yes. We strongly support contract compliance and some type of mandatory employment equity legislation. We have always backed that up. There has to be some way of getting employers to really listen that this is an important issue and that discrimination is a serious issue, and the only way to do that is if the government refuses to provide contracts to these corporations that openly discriminate against their employees.

Mr Philip: In your experience, has this worked in the US jurisdictions that have applied this?

Mr Radford: Yes. The United States government in 1965 introduced contract compliance, and in 1985 and 1986 the Reagan administration tried to dismantle this. Many boards of trade in various United States municipalities and other corporations, which found that affirmative action and contract compliance was actually effective, opposed the Reagan administration's dismantlement of these structures, because they were actually finding that it was beneficial to their corporations and they were getting employees who were quite beneficial.

So this clearly shows that it is an effective means not only of making sure that employers do not discriminate but also improving an employer's job market and the skilled people they can get in. It has been clearly shown in the United States that it has been an effective means.

Mr Philip: Is it fair to say, from what knowledge you have of the

American experience, that voluntary affirmative action and voluntary compliance in fact did not work?

Mr Radford: It did not.

Mr Philip: Whereas compulsory compliance as you are advocating, in the American experience did work?

Mr Radford: Yes. Being from the United States myself—I have been in Canada since 1969—it was effective. It did not get all the target groups within the working field, but it did get a substantial number so that at least people had a foothold.

Mr Philip: Would you agree that section 13 and section 28 of the present bill give the Ontario Human Rights Commission considerable powers to do systemic studies and to take initiatives on its own?

Mr Radford: Yes.

Mr Philip: So you are not advocating the need for any major changes in terms of their powers under the act.

Mr Radford: No.

Mr Philip: Your argument is that they should use the powers they do have under sections 13 and 28 and get on with using those powers more frequently.

Mr Radford: Yes. We think if they actually used these powers in some type of resources and lived up to the mandate, they could actually accomplish this. The means are there; it is a matter of using them.

Mr Philip: With regard to your recommendation 9, that the committee recommend that the protection of political opinion become a protected right of expression, I gather you would even apply that to public servants in this province.

Mr Radford: Yes. They are citizens like anybody else.

Mr Philip: It is a rhetorical question, but one I could not resist asking.

The Chairman: If you had a priority, one to five, what would be your first, second and third priorities that the commission should be doing immediately? Any comment on that?

Mr Radford: I think 11, 1 and 2. I think the alliance has taken strong consideration. Just from the phone calls I get at the alliance from average individuals, their basic complaint is: "Look, I don't want to use the human rights commission. It'll be three years before I get an answer and I'm in deep trouble right now."

The Chairman: Thank you very much for your presentation and for appearing before us today.

Next we have the Federation of Race Relation Organizations of Ontario. Wilson Head, Would you like to take a seat up at the front? As you are aware, you have half an hour to make a presentation or to have questions asked, it is at your discretion, but a maximum time of half an hour.

FEDERATION OF RACE RELATION ORGANIZATIONS OF ONTARIO

Mr Head: Unfortunately, my report is just off the press. It is being handed out now. One of the problems we had was the lack of time. As I indicated to the clerk, small voluntary organizations—necessary to check with their boards of directors and what not—sometimes find it very difficult to make presentations that reflect the whole population of their organization.

1530

In our case, the Federation of Race Relation Organizations of Ontario is a provincial organization with five chapters, of which the Urban Alliance on Race Relations is one, so I know a lot about what Mr Radford was just saying. We have other chapters in Sudbury, Windsor, London and Ottawa, with the possibility of chapters in Hamilton, Kingston and so on. So this brief is on behalf of that group.

Some of the recommendations we have would be fairly close to the ones you just heard from the alliance. Since I have been identified with that organization for many years, I had a pretty good idea of what it was going to say anyway. What we are saying here is somewhat different but somewhat similar. I am not going to read it; I am just going to briefly outline what our feelings are.

We have had a great deal of evidence already of the existence of prejudice and discrimination in Canadian society. We have had a number of studies: the royal commission report by Judge Abella; Equality Now!, a report by the federal government in 1985; Who Gets the Work? and No Discrimination Here, reports by the Urban Alliance on Race Relations and the Social Planning Council of Metropolitan Toronto, respectively. We have had a number of other studies recently that have been done, all of which have said the same thing. Not only that, our activities in the federation, in the five cities I have just mentioned, have pretty well substantiated the fact that the problems existing in Metropolitan Toronto also exist throughout this province, in Sudbury, in Hamilton, in Ottawa, in London and in Windsor.

In travelling across Canada, we get the same picture across the country in varying degrees. One of the reasons we have it more severely here is because we have a larger nonwhite population in Metropolitan Toronto than anywhere else in Canada. We probably have a nonwhite population anywhere between 12 per cent and 18 per cent. Nobody is sure right now, but we will know at the end of the 1991 census. The figures have not been clearly spelled out in previous censuses by Statistics Canada.

The important thing is that the largest degree of discrimination, the most complaints of discrimination, exists in the field of employment. That has been substantiated over and over again. It exists in housing, it exists in education, but not as much as in employment. So this is the heaviest area of complaint in the field. I want to just touch upon that.

The second point I want to make is that it is changing. It is changing in the sense that right now we no longer have belief in the basis of our experience. We no longer have much belief in the method we used in the past 20 or 25 years, that is, the method of individual complaint.

I have done studies in this field myself, the first being done in 1975. At that point, in 1975, only 9.5 per cent of black people I talked to said they would go to the human rights commission if they felt they were

discriminated against. I did a similar study in 1981, six years later, and I got exactly the same figures: 9.5 per cent said they would go to the human rights commission. Why? It is the point Mr Radford made a moment ago. People said there was no point in going to the human rights commission if it was going to take eight to 12 months before you would even get the investigation started and anywhere between two and five years before you would get a decision made: a long time. In one case I dealt with some time ago in the Chinese community, the Wei Fu case, it took five years to get the decision.

This is the kind of delay which has lost credibility in the human rights commission by the nonwhite community. I know it has a new director, a new chief commissioner. I have just met Ms Frazee. I have a great respect for her. Except for the one mistake he made, I had great respect for the previous director. He made certainly a great mistake when he said there were no nonwhites eligible or qualified to work at a senior level, a management level, in his organization.

The third point is that people who discriminate are getting more sophisticated. They are not now willing to admit it and say, "Let's sit down and work out some compromise." The basis of the human rights commission activity is conciliation with those groups. It is not based upon prosecution but conciliation, and many people simply refuse that and reject that approach and say, "If you don't like what I'm doing, take me to court." They know, for example, that the burden of proof in the courts is much greater than it is in a commission of this nature. The burden of proof in the courts, as many of you know, I am sure, is that one must prove a case beyond a reasonable doubt. Someone who is discriminating is not going to do so in front of half a dozen people who can testify against him, just as those people will not do so in the case of sexual harassment. They do it in privacy and they oftentime deny they did it. This is the kind of thing you are up against.

This requires, in my view, a much better-trained staff than we now have in the human rights commission, a staff that can deal with cases of sophisticated attempts to avoid the penalties or avoid making the changes. What we are up against here—and I think this has to be accepted—is that many of the big institutions like that do not want to change. I speak here of all institutions. I have spent the last part of my life teaching at York University, teaching in the field of sociology and social work. Let me assure you, the university is very difficult to change. There is nothing more difficult to change than a university. The business world, of course, bears the same thing. The church bears the same responsibility. The police department in Toronto has the same attitude. And through our society, social change is a very difficult thing and it always threatens the interests of some people, and so you have resistance to it.

We talked about the question of contract compliance in this brief and we have said pretty much the same thing Mr Radford has said, so I will not repeat that. But I do feel there is a need for some structural changes in the commission as well as in the code.

In terms of the commission, I have a couple of things I want to suggest to you. The idea of having a board of inquiry made up of one person has a lot of dangers to it in itself. My suggestion here, and I am putting it out in this brief, is that we are to insist that boards of inquiry should include at least three people and that at least one should be a nonlawyer. There should be some people on that board who take a different position from the strictly legal position a lawyer would take and that you would expect a lawyer to take. That is one of the changes I think we ought to make and consider making.

This question of education and training for the staff, I think, is extremely important.

The question of publicity, of hiding people who are found guilty of discrimination, of not wanting to use their names: The one case I can think of here, some of you may remember back in the spring, was the Majestic case, where they did come out and name their respondent and named the fine. The fine they gave was \$250,000. This I think was the first case of its type in Canadian history where this kind of thing occurred. In the courts we do this. When a person is convicted in court, he or she is named in the court. The complainant gets named and the respondent gets named.

But here we have been very gentle to people who discriminate. It leaves the impression that maybe people do not consider this very important, that discrimination on the basis of race, creed, colour and sex and all the rest of it is not very important. I suggest to you that it is getting to be more and more important every year, as the population of Canada changes---and it is changing. Those changes are going to be in the direction of more and more nonwhites coming to Canada from the poor Third World countries. They are the ones which have people who want to get out and find what we call the freedom and democracy of Canada. Why should they sit there and starve when our native white population did not stay in Europe and starve? They came here to find a better way of life for themselves.

I think that is enough for me to say now in terms of my own presentation, but hopefully people will want to ask questions about this and I would be glad to entertain them.

Mr Breaugh: I wanted to pursue something with you that has been suggested to us on several occasions now. One of the basic problems with the human rights commission has been and continues to be now that it is asked to play two very different kinds of roles for us, and often in conflict: on the one hand, as an advocate of human rights, some would say quite successfully; on the other hand, to make judgements on individual cases. On that side of it most people seem to feel it is not doing very well, never has and probably never will.

So a number of people have suggested to us that this function should be taken away from the commission, with a variety of responses generally centring on the idea that they might just as well go to court, get the lawyers out, have everybody testify under oath, in an identifiable process that we have used for a long time. It probably means that people will not make complaints. To go to court, talk to lawyers, that kind of process usually means you are not going to really complain about something. You have a case; it is a little more than a complaint. Somebody did not call you a name, they did something to you and we can prove that in a court and we have witnesses, but we know that process.

I would like to hear your views on it. Is that a viable option, to sever that one major function, to let people go to court, to talk about providing some legal assistance or something and to do the complaint part of this process through the courts?

Mr Head: I do not think that is a viable option. I think the court situation itself is such that it does not get at this kind of fact. The court does not, as a rule, look for one thing except innocence and guilt. In many ways these things can be conciliated, and sometimes the human rights commission had that success. I do not want to give the impression that it has

had no success. I am simply saying that its success rate has been largely due to the fact that it was able to get at things early and work out an agreement with the two parties, not just claim somebody is guilty and somebody is innocent; because in this field, as in so many other fields, there is no such thing as just pure innocence and guilt, in most cases. There is something on both sides. Some people who do not get jobs do not get jobs because they do not have qualifications. One has to be able to thresh those things out.

1540

I do not object to the complaints bureau, the situation as it is now. What I am saying is that it is not working well enough, for a variety of reasons. That long history of delay is partly due to the fact that they have never had adequate resources. If they had adequate resources, that could be cut down tremendously.

But I do agree with you from the point of view of laying the complaint and also acting as judge at the same time. I think there would be some value in having those two functions separated. One of the things we are recommending here in terms of systemic discrimination is that there should be a unit separate from the compliance unit, a separate department.

As you know, just in the case of race relations, they have set up a separate organization called the race relations division. This is headed by Dan McIntyre right now. That is focusing pretty heavily on the educational research function of the whole field, taking that function out of the human rights commission except on the straight complaints.

But I think there is a need to study this. I am not even clear in my mind that they should have taken the race relation division out of the human rights commission. Maybe it should stay there. Maybe it should be the organization that does the research and the education, the conferences and the workshops and that kind of thing. Certainly, as far as actually having the complaint handled in a judicial way is concerned, they have boards of inquiry, of course, and the boards of inquiry are presumably independent of the commission itself. They do a ruling, where the two parties cannot come together, where there is no agreement. The question I raised there was: Is that a good enough way to do it? I think you can argue it both ways.

Mr Breaugh: I will not argue this at length, but I am concerned about this. We do keep hearing that there is a problem with the complaints process. We do keep hearing that more resources would resolve that, so that is clearly one option. But flip that coin over and look at the other side of it. Are we creating, then, a mini-court system where there are no lawyers, but in fact it is a court where the people who will be doing the judging are not qualified to be judges but have all the power of being judges?

That is the quandary I am trying to work my way through here. I do not mind advocating more resources for something as worth while as a human rights commission, but I do need to know that the commission can function, and I am not convinced of that at the moment. I need to know that they have a clear understanding of why they are in place, and I do not have that at the moment. For example, we spent some time this morning talking about the administrative side of it. Do they know how to hire people? That is not clear to me either.

This is an uphill struggle, to argue for a bigger budget when you are not sure what people are going to do with those resources, when there has never been a really clearly demonstrated role for them to play. There is a lot

of uncertainty in here, and it makes the political argument about more resources a very difficult one.

Mr Head: I can appreciate what you are saying, because about three or four years ago an attempt was made to clear up the backlog and additional funds were made available, but the backlog is still there. This does raise the question of how the funds are being used. I agree with you that simply giving it more money in itself will not solve the problem. One of the reasons I said so is that I mentioned the question a moment ago. I think we should be moving, to some extent, away from the individual complaint situation to a more systemic, structural type of situation. That is where most of the problems are today, and there will be even more in the future, I think. In a sense, it does require, in my view, some reallocation of funds.

On the other hand, you are caught in the bind of saying, "What are you going to do about the people who are complaining?" Somebody has to handle that too, so you need both. The question of training and so on is a very serious question because, let's face it, a human rights commission is still an organization based upon an assumption that this is the way to go at it, which has very rarely been tested.

The question of a board of inquiry has been tested, and the Canadian Human Rights Commission was stopped by the courts from appointing the board of inquiry itself. The board of inquiry now is appointed independently of the commission. When the commission rules in favour of this or that or the other, the person can ask for a board of inquiry, and the board of inquiry then can make the decision that you are speaking of, which is independent.

My concern about the board, as I mentioned a moment ago, is that we ought to have a more broadly based board rather than what we have today, the one-person board, who is being purely legalistic. Discrimination is a legal situation, but it is also a social situation, an economic situation and so on. It has many more ramifications than simply legality, so I would like to see that maintained and kept in it.

Mr Breaugh: Just one final point: A couple of people have suggested to us that appointments to the commission in various capacities is questioned, to be polite about it, and that this ought to be opened up, that we ought to be able to have a clearly identifiable public process for making appointments at all levels in the board.

I saw a couple of unusual things happening here today, a member of a minority group suggesting that you need a certain number of people before you would be qualified to go there. There is a problem with that. The idea of minority representation really means that you do not need to have 20,000 people before you qualify. If you are a minority, even if you have only a few hundred people, you are a minority. I guess he was saying big minorities ought to get involved in this; little minorities should not get involved in that.

The mechanics of it would be difficult, and I grant that. Would that solve some of the difficulty here if there was an appointment process that the public in general understood or at least had access to? At least the old kind of bugbear that that person got appointed to that position simply because he is a member of a visible minority and he holds the right political party card in his pocket—

Mr Head: And you take it to the commission now.

Mr Breaugh: Would we resolve some of those problems if we were able to have a public process?

Mr Head: I think so. I think it would because the basic feeling we have now is that when Liberals are in power, we get Liberals appointed to the commission, and when Conservatives are in power, we get Conservatives appointed to the commission. The same thing is true at the federal level as well.

Mr Ballinger: What happens when the NDP gets in power?

Mr Breaugh: Then we will all be on the commission.

Mr Head: They have not been in power yet, not in this province at least.

That is the public perception, as you say. I agree; I would like to see as they do at the federal level, a panel of people from which people are drawn, a panel from which people are drawn randomly for these positions. I do not know how practical that is in a political sense, but it would make a lot more sense if we did that, sort of like the American Bar Association does in electing judges for the courts. They give the government a list of names and the government is free to choose from that list, but at least that list has been looked at in terms of qualifications by the bar association down there before they are appointed.

Mr Curling: Professor Head, since the 1970s I have listened and watched you and read some reports and comments and studies that have been done—you have commented and studies have been done. I find you consistent. I am hearing the same thing. I recall too when the study came out about who gets the job, that we felt at last we are targeting exactly where it is. You said in your report here that the most frequently reported area of discrimination against visible minorities is discrimination in employment. We know what that does to the individual. One loses one's self-esteem. Morale of home and morale of workplace goes down and the cost to society, etc, goes up. You have been a professor. I know you lecture and tell all your students exactly, hoping they go out and spread the word and hope that the government comes in line.

My problem here, and maybe you could comment on this. The word has been said over and over. It is not new, what you are saying.

Mr Head: Yes.

Mr Curling: Who is choking on this? Is it that the governments are not listening or is it that when we do give to places like human rights and say, "Here is some money," that they are also choking and do not know how to deliver? Could you comment on that?

Mr Head: I think as far as the human rights commission is concerned, it is the question you raised over here. I do not believe, at least I have not heard, anyone say there is a clear role for the human rights commission in terms of what it should do. You raised that question. Some people argue, and I have heard a black lawyer argue, that we ought to abolish the commission. I do not agree with that. He is saying, "Let people go to court." He is a lawyer, by the way, so he would make a lot of money presumably.

Mr Ballinger: Everybody has a vested interest.

Mr Head: Yes, right. Certainly, that is one of them. I notice in the new statement of policy by the new chairperson of the human rights commission, Ms Frazee—I do not know if you have that in front of you or not—she is laying out a pretty clear-cut statement, it seems to me—I think all of you ought to have that—of what she sees should be the role and policy and so on of the human rights commission. Whether the government go along with that is another question. But that is certainly one of the blocks right now.

The second thing, talking about the community, is that I do not feel—I have talked to a lot of people about this—the kind of, shall we say, rising sentiment against discrimination in this society that I have seen in American society, which led to the Civil Rights Act of 1964 under President Johnson. There you had heavy discrimination. Our discrimination is much more subtle, much more sophisticated. The result is that if people can get away with it, they simply complain and grumble to themselves because they do not think there is anything they can do anyway. This is what I have heard over and over and over again. Why bother to complain? Nothing is going to happen.

1550

If people had a feeling that they would get somewhere, I think the number would rise. As somebody has put it, a little freedom is a dangerous thing, as Mr Gorbachev is learning now in Russia. Right now, there is a sense of hopelessness out there and that is part of the problem, part of the barrier you are talking about. The other part of the barrier is the one I mentioned earlier. The existence of institutions and individuals has changed. People simply do not want to change. They want to do what has been comfortable, what they have been doing all these years, and if they have not had blacks and browns and yellows and so on in the company, they do not want them there. This is very clear.

I have heard story after story about people at employment agencies going back to the Alan Borovoy study method in the 1970s in which you test out employment agencies. They tell you that people say: "Don't send me any blacks. Don't send me any of this. Don't send me any women. Don't send me any young women." Many employers ask these kinds of questions of employment agencies, and again, they are showing the very tough barriers in bringing about social change in this area. I think what it boils right down to, when it focuses on the employer, we have to say it is the employer. We have to say it is the employer who is resistant, whether it is the government employer or the private industry employer. That is where our largest industry must lay if we talk about employment.

If we talk about other areas, of course it is different, but in employment—certainly when it comes to school, the streaming of black kids into dead-end classes, that is in the school system. It is among school boards and trustees, etc. In effect, it is each of these institutions protecting themselves and resisting bringing in people they have never have brought in before.

Mr Curling: Ms Frazee has inherited a commission that seems to have gone through some rather shaky times. Do you feel that the morale of the commission is in a position now to address the changes and challenges ahead of it, or would it need some more changes in order to do so?

Mr Head: I think this is an iffy question, because I think that the new director, the new chief commissioner—I have met her. I think she is a

very remarkable woman, a crippled woman in a wheelchair and all the rest and yet she has succeeded in the things she has done.

I have a feeling, Mr Curling, that had he not made this one blunder, Raj Anand might have succeeded too, but that one blunder killed him, that blunder plus the fact that he did not admit it was a blunder. He kept saying he could not find any qualified people, and the more he said that, the deeper in water he got. But he was a bright young man. He was beginning to try to set up employment equity programs in the commission. He was beginning to try to set up a contract compliance program, which has not yet been approved by the government but which he hoped would be. I think his mind was set in the right direction.

Right now the morale is very low. I do not think there is any doubt about that. I hope she can bring it about, but I do not know for sure. I think only time will tell, but that certainly is my hope.

Mr J. B. Nixon: A quick supplementary: Going back to some questions Mr Breaugh was asking, you are clearly emphasizing the need for more investigation of systemic discrimination. I just want to put a practical question to you. In a world of scarce resources, if you had to fall down on the side of increasing emphasis on compliance in individual case investigation, and on the other hand, systemic investigation, which side would you fall down on? I think I know the answer, but I just—

Mr Head: You cannot ignore the complaints, I do not think. I think it would be awful to say to people, "Okay, you have made your complaint but nothing can be done about it." I think that would be unacceptable. In fact, I think you would get a real blowup if that was announced, if the human rights commission had given up that particular role. I think we need both. I hate to say that. I do not want to make it sound like I am riding the fence, but I think we do need both and I think we just have to face that.

Mr J. B. Nixon: To me, it almost seems that the individual case investigation is a reactive mode, whereas—

Mr Head: It is.

Mr J. B. Nixon: —systemic investigation is clearly trying to get to the bottom of the problem and look at reform extending beyond mediation of an individual dispute.

Mr Head: My own personal view, of course, would be it is the second, the systemic—I think you have to go out and find it and in some cases do test cases. Unofficially, the human rights commission has done that in the past. They have had people who went out and tested an institution and found out that it discriminates. Then they can make a case. The question of initiating complaints is very important as well, even in the case of individual complaints, because you can do this in a number of ways.

I can recall back when I lived in Windsor in my early days in Canada in the 1960s. The then director, who you all know, was Dan Hill, who was most recently the Ombudsman. He used to come to Windsor and say: "Look, I would like to have you test this restaurant to see if they will discriminate against you. If they do, file a case. I can't do it. I am sorry." I would like to see the commission given the power to do that itself. This is what happened and

who gets the work. They did a study of who gets the work. They sent out teams of people to check out places and see what they were doing.

Mrs Marland: Professor Head, you have mentioned twice this afternoon, in commenting on the situation at the Ontario Human Rights Commission that brought this matter as a referral by the Legislature to this committee, that Mr Anand is a very bright person. I think those were your words, something like that. Twice you have said "except for one mistake he made." I wonder if you could explain that statement.

Mr Head: I think it was the hiring situation, the situation where he hired seven managers, all of whom were white.

Mrs Marland: I am sorry; I could not hear you.

Mr Head: He hired seven top managers, all of whom were white, and he said he could not find qualified nonwhites. The community blew up.

Mrs Marland: Which community blew up?

Mr Head: The nonwhite community.

Mrs Marland: You are identifying that as his one mistake.

Mr Head: He may have made others too, but that is the one I think was the crucial mistake. I do not know about others. I am not inside. I have heard that there were some feelings that he was going too fast in some areas of government. Some people thought he was going too fast; others thought he was going too slow. In this kind of situation, we would not have that, I think. I do not think there is any way to satisfy everyone. I think he had a sense of what was the right direction to go. I still cannot figure out why he made this kind of mistake, because he should have known better.

Mrs Marland: An earlier deputation this afternoon was talking about a similar example. I raised with that person the same question I would like to ask you. When you have that kind of situation within the human rights commission itself, where there is blatant discrimination against individuals who may be eligible for a position but do not get that position and they are black or are members of a visible minority—in the case of the director of compliance, we actually had, I understand, two individuals who were black and very experienced and were not given the position—in that case, is it not a tremendous irony that those individuals have nowhere to go?

They are trying to get a position at the Ontario Human Rights Commission and they think they have been unjustly discriminated against or they have not been given the equal opportunity that someone who is white has been given. Where do they go? Who do they appeal to? An earlier speaker did suggest that this whole process might better be dealt with in the courts than with the human rights commission or a similar body. I wonder if you would like to comment on that.

Mr Head: I think there should be appeals of any kind of decision made by the commission, but apparently there is no mechanism for doing that in the case of staff. I guess it is conceivable—I am not sure whether it is possible—that they could go to the Ombudsman, since presumably the Ombudsman can deal with problems in the government itself. That is the only other possibility I can think of unless it is the Ontario Labour Relations Board, which is another possibility. I do not see any other mechanism at this point,

though, outside of those two, that they can go to except in the political realm.

The Chairman: Your time is up. There are a couple more members who just want two quick questions, Mr Breaugh and Mr Velshi. I mean Mr Philip. Pardon me.

1600

Miss Roberts: You two are starting to look alike.

Mr Breaugh: That was really unkind.

Mr Philip: To me, it was unkind.

Wilson, you talked about the need to highlight cases where decisions had gone against certain employers. Of course, you get a highlight in the annual report, but very few people read annual reports. Is there another method that you can suggest of highlighting cases where companies or individuals have been found to be responsible for human rights violations?

Mr Head: At the time the decision is made.

Mr Philip: Do you think that at the time the decision is made there perhaps should be a release of that as a statement to whatever media and press may be interested, the same way the media tend to follow what is going on in the courts?

Mr Head: I just came from a meeting of the Ontario Press Council; I am a member of the Ontario Press Council. We had the Toronto Star on trial today. That decision will be given next week, pro or con. If it is pro, the Star will print it. If it is con, the Star will have to print it as a condition of being in the press council, because if you do it six months later or a year later in an annual report, who remembers it, anyway?

Mr Philip: It is old news and nobody wants it printed six months later.

Mr Head: As you say, who reads these annual reports?

Mr Velshi: Dr Head, this is supplementary to Mrs Marland's question to you. You said Mr Anand made one mistake. Then you made two statements. One was that he employed seven whites. The other was that he claimed there were no visible minorities putting up for this position. Which mistake is it you are—

Mr Head: I think they go together, because in the first place, he was justifying the first mistake by the second mistake, by saying there was no one available. There were people available.

Mr Velshi: The employing of the seven whites: Was that, do you think, a mistake on its own?

Mr Head: It is the kind of mistake that, if you make it, is very hard to justify, because the public out there would not accept that as an argument. I would not accept it as an argument, because I know there are people who are qualified out there. In that sense, in trying to justify the first mistake, he made a second mistake.

The Chairman: Thank you very much. It is good having you with us and having your thoughts with regard to the human rights commission. Thank you for your presentation.

Next we have Major Patricia Ryan, if she would like to come forward now. I am sure she has a presentation she would like to make to the committee. You are allowed 15 minutes.

MRS MAJOR PATRICIA RYAN

Mrs Major Ryan: I must say I feel like a very little fish climbing upriver against a very big stream going down the other way.

I am a Canadian citizen by choice, with a background of 31 years' service as an officer of the Salvation Army. This is a personal comment, and although I do this with the knowledge and approval of my leaders, this is in no way an official presentation on behalf of the Salvation Army.

In this review of the operation of the Ontario Human Rights Commission, I feel it is a privilege to have this opportunity to speak. Thank you for that.

I have no problem agreeing with the wording of the Human Rights Code; I certainly do recognize the dignity and worth of all people. What I have difficulty with is the way the commission has attempted, and is attempting, to enforce the working out of that premise. For instance, to place hard rules upon employers and to elevate certain groups of individuals into special categories with privileges is to institute discrimination. If that discrimination is directed towards the majority, it might seem to be justice at last achieved, but I contest that the commission is responsible for redirecting prejudice and discrimination so that now the roles are reversed.

Let me illustrate to you what happened to one young man who was an excellent student in his field of public administration. He applied for a job and then followed up his application with a long-distance telephone request for an interview. The personnel representative at the other end of the line was friendly but was hedging about actually setting up an interview. Finally, he came out with it: "You seem to be an excellent candidate, just what we need, but are you white?"

He went on, "You see, this position has been designated an affirmative action position and it would be a waste of your time to travel all this way for a job we cannot offer you." That is discrimination. This can in no way be labelled equal opportunity, and simply fosters resentment and hostility. I have observed a new atmosphere of prejudice which did not exist before.

When my son was six years old, he started at a new school and came home full of enthusiasm about his new friend Johnny. Day after day, I heard what Johnny had said, what his mom had said and what they had done together. I knew almost all there was to know about Johnny, but only when Johnny came to our home did I find out that he was black. Our family used to be colour-blind; now our lives are being changed because we are living in a society so preoccupied with labelling people and putting them into categories of colour, creed, mobility, place of origin, citizenship and so on, that we are pressured to view others in those designated sections of society.

When the commission lumps unrelated groups of people together, those who

suffer discrimination through no fault of their own and then those who single themselves out by choice, the outcome is a disservice, not an improvement.

Is the commission dabbling with heavy hands in the delicate fabric of our lives? There are many people who have their roots deep down in this society. We have our foundations established; yet, we are being challenged to change our way of thinking, even though our thought systems are long established and of proven worth. Why is it that there is such panic when a phone call is received from the human rights commission? An ordinary individual feels invaded and accused, yet he or she has not erred and certainly could not be accused of any wrongdoing.

Your federal counterpart has recently redefined the meaning of the word "family" in order to avoid offending a small but vocal group attempting to legitimize its sought-after minority status. In this unprecedented action, there is a much larger group of Christians of all denominations who seriously question the authority of that commission.

In our system of democracy, it is electoral accountability that provides one of the checks and balances on the abuse of, or misuse of, power. Elected officials have balked at the idea of altering the foundations of society, whereas unelected and largely unaccountable human rights boards tackle that which the accountable have not dared to tackle. Again I ask, is the commission dabbling with heavy hands in the delicate fabric of our lives?

When I read in the media and research for myself the literature about and achievements of the commission, I have a growing sense of alarm and unease. It is quite evident that the government and appointees involved in the establishment and operation of the commission are men and women of goodwill and honest intent. However, the problems that exist and the methods that have been set in motion to deal with those problems do not seem to have any connection to each other, or should I just say that I think the thrust of the commission is wrong and is creating antagonism and anger. People, especially young people, are frustrated and discouraged.

No government agency is ever going to wipe out all bias. Can you tell a child that his father is exactly the same as other fathers? Of course not. He regards his father as the very best; he is biased, and who is going to censure that? To give every individual in the land an equal opportunity is noble and justifiable.

However, some zealous enthusiasts are intent on changing society to conform to a new image. What is this new image? Before the mandate of the human rights commission is expanded, will we be provided with a blueprint of the society the commission envisages and is working towards?

The present method of complaint, followed by investigation and then judgement, does not produce reconciliation or true harmony. This approach at best achieves the outward compliance with the commission's pronouncements, but forces many ordinary people into a situation of subliminal prejudice and growing resentment. Is it not possible for the initial reaction of the commission to be one of reconciliation instead of confrontation? Since a charge of prejudice can be brought forward on the basis of a racist joke, will we see the day when someone from Newfoundland can bring a complaint to the commission because of a Newfie joke?

There is a great deal of confusion in the mind of the public as to the true nature of the human rights commission. Are they police? Are they the law

courts? Are they parliamentarians? Are they Thought Police? We do not know, and some of your terminology is difficult to reconcile ourselves with in our beloved Canada, our land of opportunity, freedom and promise. Such phrases as "powers of investigation," "new systemic unit" and "public education"—is that re-education?—give us cause for alarm.

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All fairminded people would agree that there is much work to be done in order for all to be treated as equals, but pressure is coming from minority groups with big voices, resulting in the commission being pushed and pressured unrealistically.

One incident happened recently in Toronto when the mayor was approached by a small but vocal group. When their request was denied, they came back again, demanding a response to their petition, and they let up only when approval was given. Leaders of this group admit that their motivation is publicity and they were prepared to take the matter to the human rights commission if they did not get their way. That is manipulation.

If the commission really wants to see all bias removed from our society, then it can only seek to change the hearts of people. That is the task of religion, not of a government-appointed body with only human resources to fall back upon. At best you can foster a climate of tolerance and remove some of the barriers of division. Doubtless you realize, but let me remind you, that the majority of citizens really care about others and are busily engaged in helping others. Many fear that the commission, with its coercive powers, is altering the very fabric of our lives, because a small percentage of the population seeks to further its own interests and specialized goals at the expense of others.

The commission should not be swayed by them. Their lobbying seems to be planting seed in very fertile ground while the silent majority feel compelled to keep quiet because they cannot compete with their tactics. Is the commission truly objective and does it employ healthy scepticism, or does it allow every pressure group a disproportionate amount of the commission's time?

On the matter of freedom of religion, the question is being debated among Christians whether the commission is truly adhering to a policy of freedom of religion, or does it advocate freedom from religion? It should always be within the consciousness of all governing bodies that Canada as we know it was founded upon biblical principles and it is these principles that have formed and moulded our society, including the tolerance and openness which we see here today. It is impossible for you to legislate such needed attributes as morality, but the people of this province would support wholeheartedly the aims of the commission were they to reinforce the wholesome foundations upon which our society has been built and which sustain this country today.

May God bless you and give you wisdom in your deliberations.

Mr Velshi: I think it is a very thought-provoking presentation you have made here. I think it important that a minority should not be allowed to dictate to a majority, but the situation here is somewhat in reverse. If you can honestly tell me that there is no discrimination in society in Ontario today, if you can honestly say that, then I think your presentation is perfectly correct, if you believe that.

Mrs Major Ryan: I have said there is a lot to be done. I agree with you. There is a lot to be done.

Mr Velshi: If that is the case, then what can be done? The Ontario Human Rights Commission, as you state in your presentation, is an extension of the elected government. They are not an entity unto themselves. They are responsible, with a mandate from the government, to correct this imbalance that has been created by a society that you feel has continued with a certain thought process over 100 years and we should not be able to disturb that. I think it needs to be disturbed, because a lot of people feel that the thought process is incorrect.

We are not trying to change attitudes. All we are trying to do is regulate behaviour. We do not need to change anybody's attitude. I do not think that is important, because if you do not want to change, nobody is going to force you, but we will regulate behaviour. We think it is very important that if you think something, keep it to yourself.

Mrs Major Ryan: Discrimination is attitude, so if you are trying to eliminate discrimination, you are trying to change attitude. I agree. We certainly need correction on that, but it is how it is being done that I am arguing about. Do we come in with a heavy hand of enforcement or do we go—there are many things that are happening today that are changing thought patterns. Look at Participaction and all kinds of other things that are much more minor, but they still are changing the thought patterns of our people. Can we not come at this matter in other ways than the way that those in the Ontario Human Rights Commission is bringing it right now? I do not deny that there is discrimination, by any means.

Mr Velshi: Do you have any ideas of how it should be done, then, if a voluntary method has not worked and if you call this heavy-handed? Perhaps I am inclined to agree with you; it may be heavy-handed. What is the in-between situation that we have not seen that we could do?

Mrs Major Ryan: You could go to the established influence for good that is right within our society which I, being biased, come at through the churches, our religious institutions and our organizations such as Boy Scouts and that kind of thing, that form thought patterns for our young people. If you come to it through that means, then you come to it through a means whereby this is an authority figure for our people; and I talk of all religions. I do not think there are very many religions that advocate discrimination or that push that we should regard ourselves as being that much different from other people. We are born equal.

Mr Philip: You say discrimination is attitude. Is it not also behaviour? Does the state not have the right to take reasonable means to stop objectionable behaviour, and is that not what the human rights commission has been trying to do?

Mrs Major Ryan: I believe it has, but as I have already said, I think that it is coming down heavily. If you are trying to form a new thought pattern in persons, then you cannot do it by putting a fine on them or putting them in jail. Do you understand where I am coming from?

Mr Philip: Maybe the way to stop discrimination at a particular company is to ensure that it hires members of a visible minority group, because that is the behaviour you are going to change. If you change that behaviour, maybe you will change the attitudes after they actually get to meet

the member of the visible minority who is now employed in that spot. And I ask you, how do you change the attitude then if you do not first stop the behaviour that is objectionable?

Mrs Major Ryan: You are talking in an area in which I have no experience. I cannot talk for big business and corporations. If you want to bring criticisms against them, it is another ball game for me. I am just coming to you from my own experience, from my own work among minorities and from where I come from, which has been working many times with minorities, the down-and-outs and so on.

Mr Philip: May I ask just one last question; I think this is supplementary. You say that you are appearing here with approval of your leaders, I gather. It says, "I do this with the knowledge and approval of my leaders." I gather that does not mean the endorsement of your leaders, nor does it mean that the leaders of your church have either read the brief or given any consent to any of the ideas in that brief.

Mrs Major Ryan: They have read the brief and I come as an individual. I asked their permission to come in my uniform. If I had not received their permission, I would have come in civilian clothes. I do that because there may be the mistaken impression that I come representing something on behalf of the Salvation Army. I do not, but I do have their approval to come in the way I have come.

Mr Curling: Major, in your recruiting of soldiers who are non-Christians, I presume you try to change their thought process to make them Christians. I am addressing an area that you are fully familiar with.

Mrs Major Ryan: We present to them the Gospel. God changes their thought patterns.

The Chairman: Thank you very much for your excellent presentation. Next we have Mr Persaud, I believe, if my itinerary shows correctly. Yes. Mr Persaud, you have 15 minutes and you can use all of it to make your presentation, or you can leave some for some questions.

Mr Persaud: I will try to do as much as I can in the small amount of time I have.

Mr Ballinger: There is not one person here who is going to bite you, except for Mr Philip over there; he is the only one who is known for that.

JOHN PERSAUD

Mr Persaud: I am here not on behalf of the support committee, but as a private citizen presenting some of my difficulties and experience with the Human Rights Commission.

In a democratic society, as we are in Canada, I do not think for one minute that when somebody finds himself being discriminated against, he has to go out and lobby a public group to get the HRC to do just what it was elected to do, which is to protect the weak from the mighty, the poor from the rich and the David from the Goliath.

I have had numerous experiences in this field of human rights within the trade union movement and within the corporate world. As regards myself, I enjoy the privilege of Canadian lifestyle, and I want to enjoy it to its

fullest. The only way one can enjoy that lifestyle is by having a job that he enjoys doing and leads to full participation economically, politically and socially in Canadian society. This was denied to me, but in my experience I am going to target where the Ontario Human Rights Commission has failed its mandate, and I will begin.

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The company is Consumers Distributing Company Ltd. and there was a big publication about it. On 14 March 1977, I was fired for due cause of participation in getting a union of our choice, a fair representation, to make a living that is feasible economically in Canada. We also filed a complaint with the HRC on the grounds of discrimination, harassment and the whole works. I am sorry that I do not have that settlement that did come finally. We went before an arbitrator, and I was reinstated in a lengthy decision, that speaks about the method of discrimination, the systematic way the company used to discriminate against people.

The commission then agreed with us that one of the things—and rightfully so—to do is to present the race relations committee. The company shall rightly agree that that would be the beginning. But instead of that, when he had that on paper, that the company was going to do this, this, and this, or the race relations people would educate management and bring us up to status quo, in spite of that, the people who had filed the complaint against this company are no longer there. The latest one we have is in 1982, Altas Lewis. He was called a nigger, went before the commission and again, we had a monetary settlement, without reinstatement of job, and we questioned at that point: What is the role of the HRC?

The role of the HRC, as I said in the beginning, is to promote and to protect. Now there is a company that does not have any respect for any kind of negotiation that they agreed with this commission. The commission had no mandate to say: "Well, look. We agreed here on this and you are not doing it. Now we are going to force you to do it and get it done," because they do not have a mandate, I suppose. And they could not get the resolution going because the corporation was saying, "We don't want it."

But instead of that, we have more beatings in the plant, physical beatings, after termination of the voice who is speaking, which is me, on behalf of these things. We had the intervention of the police and again, there were no charges laid because human rights is something they do not do. We have someone who will not be able to follow simple instructions in this company as to going to the washroom and she is from Uganda. She is a victim, walking on a Canadian street without any justice whatsoever. Any time I run into her and ask, "How are you doing?" I feel bad because she went to the commission and the commission said, "Well, tell me why the white man did it, because you are black." And that is discrimination in itself. It is hard to ask a woman why she was raped and it is also hard to ask somebody, "Tell me, because you are black, why do you think the white guy is doing this?" It just does not wash.

We have from this commission, from time to time, more settlements. I think the last one we had from the Liquor Control Board of Ontario was the reinstatement to the job which was a stepping stone for what we have wanted. You know, this commission outlived its mandate and I think there should be something better than this commission, because it has failed. Everybody agrees that it has failed its mandate. There must be something new.

Any act of violence or any act that makes a human being less of a human being is a crime. I personally, as an individual, am here to voice this, that it should be made a crime and must be dealt with in a fashion of a court, not like the OHRC. You know, you go to them, you give them all the information, they give it to the management and you do not even hear what the management feels about you today. You do not even see what the management has to respond to your complaint and after a while they force you to make a settlement and you still do not even see on what basis they are making a settlement because you never see the management response to your complaint. That is not fair in the course of law.

The other thing that I have a problem with is the process of legal representation in the Ontario Human Rights Commission. Unfortunately, my case is not finished so I would be treading some thin line here, but when we talk about legal representation, we talk about the lawyer a person chooses that he or she will feel comfortable with to go to court and to present the case as they see fit. But when the commission sets up an inquiry and the inquiry then sets up the lawyer to do the case and the victim is outside without any participation, you know there can be no justice.

Then we talk about time limits. Well, there is a good saying that justice delayed is justice denied. Over the years we have seen in the OHRC where it takes six years to conclude a case and constant delay from month to month and month to month. So in the time of this long delay all you get is memory fading and witness rebuttal. You know, the whole process is not within the Charter of Rights and Freedoms. I believe that the question that, as a Canadian and by Canadian I mean a Canadian, and I have the charter of rights of Canada, but I cannot use the charter of rights. I just cannot use it because I have to go to the Ontario Human Rights Commission to deal with my case if I feel that I am discriminated against because of race, because of colour or ancestry. I have to use that and that takes away my right for a fair trial because it takes years before it is concluded.

In the inverse, when you see people, you know we had a case where a guy was called a Paki and so forth and then could not take it any longer, he used violence and he went to court and he got 90 days in jail. You know, one has to ask oneself the question, "What source can we use for justice?" because violence is not a lifestyle of anybody, but at the same time to be called a name every day while you are paying taxes, when you are speaking up against the abuse of other people, to be targeted by an employer who just does not want to deal with a multicultural society in its true sense, who want to say that we have the dollars and we can pull the law because we have the lawyers.

Then the commission, having all this evidence is sitting back without taking a stand and saying, "We are the human rights commission and we will do something about you." In that area it failed. It has failed in Consumers Distributing Co Ltd from 1977 to date. I mean, my case is going on; it has now been six years, three years in legal battle and no light at the end of the tunnel. That is the systematic way in bringing one to submission, that "Yes, we have money, we are going to give you free bucks, get lost." That has been the practice all the time.

Now there are people who do not want money, they just want justice in its true sense in this context, within human dignity. Money takes six years and seven years and if you live to see the torment through, at the end of the day he does not get adequate compensation. For compensation, there must be reinstatement if one is being racially discriminated against. You cannot give him money without a job, that is discrimination because of the system we are

living in where co-operation is going out and informing on the activity of people who stand up for their normal rights. I have been blackballed and I know that for sure.

My last point here is that over the years of the OHRC investigation and I will say it again—it has failed. In a changing world today we need positive thinking. We must make our society free from racism. We must make people understand that it is not the colour of a man's skin that has anything to do with him, but what he has to contribute to society to make it a better place. As for people who do not like his contribution because of the colour of his skin, I think they should not only pay a price in dollars and cents, but there must be retribution to stop them. The only one I can see is inverse to what I said and that cost 90 days compared to where we are going. And they are laughing, companies are laughing. At Consumers Distributing they laughed. As I said, they pay a few bucks, write it off in tax and they laugh at you. "You continue to complain, we continue to discriminate."

And I hope that this hearing could make the point that Mr Anand had to go because he did not do the right thing under the code. After assessing all of this, we will come up as a body of people and make strong, formal recommendations that in today's society, racism is not going to be tolerated, period. There must be a new agenda on the way of dealing with racism. The commission or any other body that takes away the charter from the group of people that is being mistreated because of the colour of their skin, must be looked at in true context.

The Chairman: I am wondering whether this case that you have been discussing and have brought up here has been settled yet. It is still before—

Mr Persaud: It is still on, which is why I could not bring all the points out.

The Chairman: So I would think it would be inappropriate for us to get into any discussion with regard to the aspects of the case.

Mr Velshi: I will not discuss your case, but is it similar to a lot of other cases that are taking place across the province?

Mr Persaud: Of course. As I said, in Consumers Distributing alone, from 1977 to 1984, to the time I was fired and not discussing my case here, you have seen the trend of people going to the commission constantly because of what was happening. A lot of them were being told, "They are white, you are black." And I was told that too: "Why do you think the white man is doing this against you?" I say that is racism in itself. You have to look at the situation, evaluate it and then make a stab. And we are not getting that.

The Chairman: That concludes today's hearings of the standing committee on government agencies on the human rights commission. This committee is adjourned until 10 o'clock tomorrow morning, but the committee should be here at 9:30 for an in camera discussion with our legal staff.

The committee adjourned at 1634.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

ONTARIO HUMAN RIGHTS COMMISSION

WEDNESDAY 4 OCTOBER 1989

Morning Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Curling, Alvin (Scarborough North L) for Mr South

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Farnan

Smith, E. Joan (London South L) for Mr Miller

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

McGarva, Bernard, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Ontario Coalition of Visible Minority Women:

Hernandez, Carmencita R., Chairman

Individual Presentation:

LeBlanc, Philippe

From the Heritage of Children of Canada:

Lusher, Sylvia, Founder

Silver, Abraham, Financial Secretary

From the Durham Ethnic Parent Committee and the Ontario Black Coalition for Employment Equity:

Cordice, John, Co-ordinator, DEPC; Chairman, Education and Research Committee, OBCEE

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 4 October 1989

The committee met at 1005 in room 151.

ONTARIO HUMAN RIGHTS COMMISSION
(continued)

The Chairman: I call the standing committee on government agencies to order. We will continue our deliberations on the Ontario Human Rights Commission.

This morning we have on our agenda the Ontario Coalition of Visible Minority Women. Carmencita Hernandez, would you like to take a chair up at the front. You have half an hour total. You can use whatever portion you like for your presentation and perhaps leave the balance for questions. It is your time now.

ONTARIO COALITION OF VISIBLE MINORITY WOMEN

Ms Hernandez: I have my written presentation. I was not able to make a copy due to two reasons. The secondary reason is I did not have enough time. The primary reason is that I believe it would be a good opportunity for you to be able to listen to me directly rather than looking at the pages as I go along, but I would be happy to leave these copies here.

I am the chairperson of the Ontario Coalition of Visible Minority Women.

The issue of racial discrimination is not new to our community. While it is true that a large sector of nonwhite ethnic minority women have immigrated to Canada at different points in time, there are an appreciable number of visible minority women who are Canadian born. They also often experience the same kind of discrimination and share the isolation and alienation felt by the newcomer.

The Ontario Coalition of Visible Minority Women was formed on 2 October 1983 after a province-wide conference, held in the fall, entitled The Visible Minority Woman: Conference on Racism, Sexism and Work. The conference was attended by over 500 visible minority women to address the issues of both race and gender. The membership of our group includes women from the Arab, black, Central American, Chinese, Filipino, Indonesian, Iranian, Japanese, Korean, native, south Asian and Vietnamese communities. The majority of our members are based in Metropolitan Toronto and Mississauga and suburbs. We also have members from Sudbury, Windsor, Ottawa, Hamilton, Guelph and Niagara Falls.

The following problems and issues relating to the OHRC's procedures of handling complaints have been brought to our attention by some of our members:

Length of time involved: It has been our experience that it takes years to have a complaint investigated, even though the OHRC was set up as an administrative body to help expedite complaints. Recognizing the fact that the commission was not set up only to expedite complaints, the initial fact-finding process can still take a year alone. In addition, what we need to have incorporated into the legislation is a time limit for respondents to

reply to the complaint.

There is a definite need to make clear the purposes of these meetings. Presumably, these fact-finding conferences or meetings exist to establish the basic issues and the facts of the case. There are instances when the complainant finds herself confronted with an array of "witnesses" for the respondent who can intimidate the complainant, thus possibly turning the procedure into an unregulated hearing. There do not appear to be strong enough guidelines as to the purpose and manner in which these meetings will take place.

According to the Human Rights Code, the Ontario Human Rights Commission has a mandate to educate the public and to inquire into incidents based on discrimination and take appropriate action, thus giving the public the belief that the OHRC is an advocate on behalf of the complainants. We know that with respect to the complainants, they see the OHRC as a neutral body. It does not advocate on behalf of the complainant.

It is therefore imperative that at the initial stages of filing a complaint the person will get as much assistance as possible in filling out forms and also as to how to collect evidence or develop a case. It is therefore important that the officers have adequate training and be sensitive to the needs of the complainants.

Complainants have to be informed that the complaint form they are signing is a legal document that will bind them in the future course of their complaints. The complainant should also be given the right to review what she has written and/or consult with her counsellor, lawyer or community worker.

Regarding procedural matters, information available on procedural matters that is currently available needs to be revised and written in language and terms that are understandable. The public, more particularly the complainants, must be informed of what their rights are, what information is needed to prove their case and that their union and/or a member of their community or group can be involved in the development of their case.

At the initial level of fact-finding conferences and investigation, it is important that the complainant be given adequate notice of the meeting and that her witnesses be admitted. We are very concerned that because there are no published guidelines available to the public, individual officers have a great deal of discretion and may not be held accountable to the parties in the complaint.

The Human Rights Code provides for a tribunal, but this provision has never been put into practice, we feel. What is in place right now is a one-person board. There is a need to have consultation with members of various communities, advocacy groups and sectors, such as labour, to discuss and debate the merits of different models.

It is important that the OHRC has a permanent location for its hearings.

Regarding settlements, most settlements are settled at the conciliation stage and do not go on to be heard by tribunals. A cursory survey of the annual report of the OHRC shows that a typical settlement at the conciliation level may involve, for example, a payment of lost wages or an offering of the next available accommodation where applicable, a written apology, posting of the code and education of the managers. In some instances, a small amount of \$200 will be awarded for personal damages.

In the cases that do go before the tribunals, the awards are similar: payment of lost wages and benefits, posting of the code, review of employment practices. Although there has been a recent case where the award was over \$100,000, general damages usually range from \$250 to \$4,000. The code allows compensation for mental anguish to the maximum of \$10,000 where the board determines that the discrimination has been engaged in wilfully or recklessly. While the commission has been moving away from the concept that intent to discriminate is a factor, the actual awarding of punitive-type damages for mental anguish is still limited by the consideration of whether or not the respondent intended to discriminate.

At present, there is not enough information as to what goes into developing a settlement. When cases are settled the reasons, or at least the contours, behind said settlements should be made known.

The coalition strongly believes and supports that there should be a unit to address systemic discrimination. This unit should be provided with sufficient and adequate resources. Needless to say, it is important that the political will, both in form and spirit, be present.

The Ontario Human Rights Commission cannot be seen in isolation. In order for at least the following principles, such as the elimination of unfair treatment, timeliness in dealing with complaints of human rights violations and the protection of legal rights of the workers who file claims to be translated into action, the commission should pressure the provincial government to reinforce workers' rights to workplaces that are free from harassment and discrimination by also strengthening the Labour Relations Act and the Ontario Human Rights Code.

It is therefore imperative that the human rights commission be an independent organization both in perception and in reality. Like all organizations, agencies, politicians and governments, the OHRC is accountable to the public and should be reporting not to one minister but to the whole legislative body.

The Chairman: Thank you very much for your presentation. I have Mrs Marland on my list, and Mr Breaugh. You have approximately seven minutes each.

Mrs Marland: Good morning, Ms Hernandez. I will look forward to receiving the copy. Obviously you have done a lot of work and given a lot of thought to this whole area, and I am very interested in some of the suggestions that you have made. I wondered if you could elaborate a little on where you talk about the officers' having to have adequate training. Do you have experience through your organization where you have found that to be a problem?

Ms Hernandez: In what is happening right now, the composition of agencies and organizations actually should reflect the population itself. When we say that they should have adequate training, they also should be sensitive to where the workers come from, because if they come from a different community, naturally there are instances where they may not be able to push forward their complaints.

Yes, we have instances where some of the people who come to us after putting in their complaints would say that the officer did not explain properly what to do. In order to give the benefit of the doubt to some of the officers, I think they probably work with the perception that they should be neutral persons or a neutral body. However, as for the workers themselves, we

look at the Ontario Human Resources Commission and we believe that it should be our advocate and working on our behalf.

Mrs Marland: I agree with you. As a spokesperson for visible minority women, when you mention that people may come from different backgrounds—that was not your word, but it was something meaning the same thing, I think—do you mean that when people go with an appeal or grievance to the Ontario Human Rights Commission, depending on their own cultural background, they may be more aggressive or less aggressive and they do not know how to go after their rights?

Ms Hernandez: I think that is the reality. The immigrant and visible minority communities do not have full access to what services are available, nor do they fully know the extent of what their rights are. So if a person goes in front of a human rights commissioner, knowing full well that her job is at stake, and if that person across the table is not very helpful or understanding, naturally the full story will not be put forward.

Mrs Marland: No. I was also interested in your last comment, where you felt that it should be a body reporting to the Legislature as a whole and not to a ministry. Could you elaborate about why you feel that?

Ms Hernandez: A strong consensus is coming out of the community that the OHRC should be made accountable to a higher body because what happens is that when government changes, our complaints or all these consultation meetings are put on hold. But we feel if the OHRC is accountable to the Legislature or to the legislative body, no matter who the government in power is, there is the so-called continuity, and then it will be put to the test as to what extent the political will of the government is.

Mrs Marland: Have you found, when there has been a change in government, that cases were put on hold?

Ms Hernandez: Let's put it this way: Historically, I have been here for more than 15 years, I have been working in the province of Ontario and have seen changes in government. We see that nothing much has changed, although recently we have had cases where there is a big amount of payment to the workers who filed complaints. We see that structurally, within the institution itself and within the foundation that should support the institution, there is no strength in making the OHRC an independent and strong body. I have been here for 15 years; I really saw that. The OHRC has been here for more than 10 years or so, so it was not really seen by us, as workers or as employees, as being an advocate for us. Although governments may change, unless the structure is given strength by all the parties concerned, I feel that it will not happen, personally.

Mrs Marland: The government has only changed once in that 15 years. I thought you said that when the governments change things get held up; because generally when governments change, there is not a change in the work flow and processing in any of the ministries.

1020

Ms Hernandez: Well, I guess I could say that for us, when there is a change of government and a change of ministers and there is regular consultation, the reason given to us is, "I am a new minister, so I have to review whatever has been presented to me."

Mrs Marland: I hear what you are saying. You are saying the change of ministers, not necessarily---

Ms Hernandez: But what I am also trying to change is, even if we have X number of changes of government, unless there is this political will among our politicians and ministers that they want to pursue the rights of the workers, things will not happen though. I mean, no matter how many---

Mrs Marland: I see, I hear what you are saying. It is a change of ministers, and each new minister comes in with a lot of good intentions about serving the rights of workers and it is not happening?

Ms Hernandez: Probably this would be clearer: With the so-called changing of the guard, unless there is co-ordination and a follow-up on the earlier concerns of the public, nothing will happen, because what will happen is time will be wasted reviewing all these old complaints.

Mrs Marland: I just have one fast question: Have you, through your organization, any experience of discrimination against visible minority women at the Ontario Human Rights Commission itself?

Ms Hernandez: There are complaints, but to the extent that a file has been made, no.

Mr Breaugh: A number of the suggestions that you have made have been reiterated in other places. For example, we just had a major study of agencies in general by the Macaulay committee, and part of what he had to say in his final report you reiterated this morning, about the training of staff who work for the agencies, about their qualifications, about the appointment process and things like that. A number of reports have been done by legislative committees on the same thing, for example, and I think it is about time we got marching to that agenda.

One of the things, though, that you did pick up on is the concept, which a number of people are proposing now, of more independence to the human rights commission. And when you come right down to it, it is a pretty strange thing that human rights would in some way be affected by a change in ministers or even a change in government. It is a little naïve, I guess, but I would kind of believe that in this country your human rights do not change with the government of the day. You may express that in a slightly different way, but that somehow seems not a sane and sensible notion to me.

Have you thought much more, though, about how independent you want it to be? I mean, are you suggesting, for example, that the human rights commission, and I hate to use this as a model, be struck somewhat like the Office of the Ombudsman, where there is a direct report to the Legislature annually, where a legislative committee is charged with the responsibility of reviewing annually the work of an agency like the human rights commission? Could you clarify a little bit what you are proposing?

Ms Hernandez: I would not put myself in the position as to get a commission to compare it with, but I would like to put forward the components of what we think an independent body should be. But it should be independent. I agree with you that a human rights situation---human rights are human rights, no matter where you are or what the government is, although of course there would be some of us who could say that with a change of government the impact of the Human Rights Code and commission would have more or less impact depending on the political outlook of the government in power.

But I would be very comfortable to mention some of the components of a body that should be independent, because to compare it, say, to one body would fall into the trap that, if you would—the important thing is that the human rights commission should be seen as a body that is independent of any political pressure. It should be given sufficient resources despite, probably, critics coming out and saying, "We are spending too much money and nothing has happened."

First of all, there should be an independent review of the Ontario Human Rights Commission and there should be input from the community, because models that are workable come from the people who are affected by it.

Mr Breaugh: Okay, just one final question: A number of people, again, have called for a full judicial inquiry of it. I suppose that would be one of the approaches towards revamping the commission. But there does seem to be a recurring theme in here that a commission cannot advocate human rights and promote that and then turn around the next day and adjudicate a dispute. You said in your presentation that your expectation is that the human rights commission would be there to kind of help people get their human rights and would be the advocate for a person who felt that he had been wronged somehow. I agree, that is my vision of it as well, but I also have to concede that I cannot have them out there advocating human rights and the next day hearing cases involving human rights.

Obviously, if I were a landlord and I knew that the Ontario Human Rights Commission was really advocating human rights for everybody in Ontario and I went to a hearing and saw not only somebody who felt aggrieved by me but the Ontario Human Rights Commission advocating on his behalf and then I looked around the room and there was somebody else from the Ontario Human Rights Commission who was going to decide the case, I think I would be crying foul. I think I would rather go to a court of law, where at least I could see the advocates on both sides and supposedly a neutral person adjudicating the dispute. That is the problem. I would like to hear your comments on that.

Ms Hernandez: The whole point is that when workers and employees go to the Ontario Human Rights Commission, there is this nagging perception that it is going to be useless, that you go through this process and nothing will happen. What has to happen is that the whole perception has to change. The perspective of the human rights commission and the officers should be that in a society like this, especially now when the companies are trying to limit costs and maximize their working capital, it is very important that they take that perspective.

Let's face it; the only strength the workers and employees of this province have is in numbers. They do not have the wealth that companies have, nor do they have access to the lawyers that companies have. It is a reality. Look at the number of cases that go in, look at the cases that have dragged on, look at the case of Wei Fu where they said it is morally wrong but it is not illegal. How are we to see all these things happening?

Mr Breaugh: Yes. It is just that, not to pick a model again—

Ms Hernandez: I see your point, but I think we are working on the premise that the perception, the training, the sensitivity of the workers are all okay right now, but they are not.

Mr Breaugh: I would tend to agree, but when I look for where we will go with this, I have to kind of look at things like a labour relations board

where I see someone advocating on behalf of the worker, someone advocating on behalf of the employer and an impartial group, usually three people, making the decision. They are not advocating for one side or the other, they are there as a tribunal to hear a case and the advocates are clear. Whether anybody likes that process or not, I think there is general agreement that at least it is a fair process. Both sides have advocates and the tribunal is there as a neutral source to make a judgement.

Ms Hernandez: Fine. Then the OHRC should be seen as a human rights advocate. The employers could also use it.

The whole point I am trying to make is that we are not speaking as to where the Ontario Human Rights Commission is going without really going back to where it has been, because there are so many things that have to change in order for it to really move forward. To get community support there should be at least our perception that things will happen.

Mr Velshi: I want to go back to your comments where you would like to see the commission responsible directly to the Legislature rather than the government. You and I come from the same direction, so I want to ask you this question.

I would prefer it the other way around, where the commission would be responsible to the government in power, whichever government it is. If something goes wrong, if it is answerable and responsible to the Legislature and you do not get a good decision from the Legislature, which party do you blame?

I would rather see the buck stop with the party in power so that I can say, "Okay, the Liberals are in power, they're not making a decision, their attitude towards human rights is lousy." Then at least there is a place we can point our finger at, whichever party it may be. I would rather see a party responsible and answerable in the Legislature, where the two opposition parties can really hammer at it and say, "You are doing something wrong."

1030

Ms Hernandez: My personal opinion is that, in terms of the purpose or the intent, the human rights issue per se should really be a nonpartisan issue and the way it is, I mean, who is really to be accountable? My personal view is that when government changes and you just leave it on the government itself, then it is going to be difficult. We are having a debate over this matter and this is what seems to be coming up. It seems that if you are accountable to the government in power, nothing much has happened. (Inaudible) what alternatives are available if you look to the bigger body that is supposedly the representative of the province.

Mr Velshi: I guess my feeling is that I would rather have some party to blame and issue the threat that, "Come election time, you're not going to get my vote if you don't empower the commission with the right to have ammunition."

Ms Hernandez: It is really difficult for me personally. Just to have somebody to blame is difficult to take, because as far as we are concerned it is also the lives that are affected and impacted day to day. This is of course being debated, and because it is a new model it is looked into by the different groups with new interest. If we see it is not working, then maybe if a bigger body handles it, it will be better.

The Chair: Thank you for taking the time to come and make the presentation before us this morning.

Our next presenter is from the human rights and international affairs portfolio, United Church of Canada, Philippe LeBlanc. Perhaps you could take a seat at the front. You have 30 minutes maximum and perhaps you could tell us what group you represent and how many are in your group. Give us a little background on your organization.

PHILIPPE LEBLANC

Mr LeBlanc: Thank you very much. I actually am making a presentation this morning on an individual and private basis, so I will give you a bit of my own background so you know where I come from.

I was the director of the human rights directorate and senior adviser on human rights to the Canadian government, the Secretary of State department in Ottawa, and I was director of the multiculturalism program of Ontario and I was director of studies and researcher and lecturer at the International Institute of Human Rights in Strasbourg, France. I am presently working in Toronto in the human rights field.

Two years ago, I was asked by the Ministry of Labour to do two reports on the future direction of the Ontario Human Rights Commission. I have maintained my interest in the human rights commission because I live in Ontario and because I have watched it evolve over the past 15 years.

My interest this morning is really in the future mandate, role and structure of the commission and I will deal mainly with that aspect and emphasize a major point.

My understanding is that the reason for the public hearings is the fact that the human rights commission has been going through some very serious crises, probably the most serious in its 27-year history. I believe that the recent events have seriously undermined the credibility of the commission and, in my view, it is important for the commission to be seen as administering the Human Rights Code fairly and with equal respect for everyone. In the kind of society we live in, a multicultural and multiracial one, it must not be perceived as favouring one group over another and must make every attempt to reflect in every way the nature of Ontario society.

In my view, the history of the past few months has jeopardized the commission's ability to function and has drained it of much of the public's confidence, and I find that very unfortunate, as a citizen of Ontario. I believe also that it has weakened the cause of human rights in the province, so I believe the work of this committee is extremely important in putting the commission back on the rails and in the right direction, if that is possible.

But I believe that the crisis we faced a few months ago has been in the making for a number of years, actually. Two years ago, as I said a moment ago, I prepared reports for the Ontario government on some of the problems facing the commission then. I identified a number of issues, including a credibility gap, the lack of public confidence in the commission and the enormous backlog of cases and the time it took to resolve complaints and the fact—and to me this was the important point—that the commission was operating on the basis of an outmoded approach to discrimination by relying exclusively on the individual complaints mechanism.

To me, that was a major concern that still exists today. Two years ago I recommended basic changes, specifically in terms of dealing with systemic discrimination. That is the major point I would like to emphasize this morning.

The problem of systemic discrimination is key to understanding why some groups have difficulties in achieving equality. Under the old system discrimination was seen as a result of ill will and ignorance of one individual, so one dealt with it by an individual complaints mechanism. Now we see discrimination more as a result of widespread patterns of discrimination which pervade entire employment systems. When the commission was created in 1962 we were in a much different era. We were beginning and we developed a mechanism which, in my view, served the commission well but is not serving the commission well now.

Commissions were introduced as a way of dealing with individual discrimination, one person refusing to hire someone on the basis of that person's colour, religion or nationality, and that can be dealt with. Since then, we have gained a much better understanding of some of the root causes of inequalities. Systemic discrimination is one of them and is not easy to get at. It is part and parcel of societal structures and it is embedded in the policies and practices of large institutions.

Systemic discrimination consists of those employment practices, policies and requirements which on the surface appear to apply equally to all. However, they usually result in an adverse or discriminatory impact on members of particular groups. In other words, systemic discrimination is the result of long-standing practices that on the surface appear to be neutral but have a detrimental impact on the employment, educational and vocational opportunities of women, visible minorities and people with handicaps.

The individual complaints mechanism which most commissions in this country now use cannot get at systemic discrimination. For example, a survey released in March 1989 by the Canadian Ethnocultural Council showed that systemic discrimination exists in the hiring practices of a number of federally regulated corporations. The reason they were able to get at that was because under the Employment Equity Act the companies must furnish statistics concerning the makeup of their workforce. They found a low rate of participation in a number of companies, including the CBC, which had 2.1 per cent visible minorities and other minority groups; CN had 2.7 per cent. We could do the same kind of study here in Ontario and we would probably arrive at some of the same figures.

One of the problems of dealing with systemic discrimination is that most human rights codes and commissions, as I said a moment ago, are mainly equipped to deal with individual complaints. Their traditional reliance on the individual complaints mechanism makes it difficult for many to change orientation and to develop new approaches to the problem. For example, if the Ontario Human Rights Commission were to decide that it would transfer 60 per cent of its resources to dealing with systemic discrimination, one would have to ask how it would deal with the outstanding individual complaints that it now has and with the ones that will come in the future.

Some human rights commissions have a mandate for dealing with systemic discrimination, but their resources are usually tied up in dealing with individual complaints. The more grounds of discrimination that you add to the commission—and I think it is good; I think we should have a number of grounds—the more you are adding to the number of individual complaints that a

commission must deal with. It just keeps growing and growing, and it will continue growing until we get at the fundamental cause of the problem.

The Ontario Human Rights Commission, for example, does have mechanisms for dealing with systemic discrimination. For example, section 10 speaks of really systemic discrimination when it says, "a right of a person under Part I is infringed where a requirement, qualification or consideration is imposed that is not discrimination on a prohibited ground but that would result in the exclusion." In other words, we are talking of systemic discrimination.

1040

The code also allows for affirmative action in section 13. In section 31(2) it says, "the commission may initiate a complaint by itself or at the request of any person," so the Ontario commission has some of the mechanisms for dealing with systemic discrimination, but it certainly would have to revise and amend other aspects of the code to be able to deal fully with it.

One of the interesting cases that was dealt with last year was the board of education which had engaged in sex discrimination against its entire female cleaning staff. A board of inquiry then awarded 325 women a pay increase, including retroactivity, worth about \$4 million. This example points to how a commission could deal with the whole area of systemic discrimination.

First of all, a systemic approach to discrimination focuses mainly on groups rather than on individuals, is preventive rather than remedial and focuses on the effects of a policy rather than on the motivation which gave rise to it. It does not care whether the policy is discriminatory or not if the policy has the effect of eliminating a number of groups from participating fully in society, and that is a hard issue to get at; it is active rather than reactive; and it is to prevent future harms to groups.

I would see a shift being made in the resources of the human rights commission—and a gradual shift, because I do not think it can be done radically—from dealing with individual complaints to dealing with systemic discrimination.

I would also advocate a public education, a public awareness program, because if this is done without informing the public and involving the public, in my view, there will be a large outcry. People will want individual cases of discrimination to be dealt with also.

I would suggest that the problem goes beyond Ontario and that a joint federal-provincial approach be developed for dealing with this issue. I would suggest that it be done through the Continuing Committee of Officials on Human Rights.

That is my presentation. Thank you.

The Chairman: Thank you very much.

Mr J. B. Nixon: Mr LeBlanc, I have a great interest in exploring with you the concept of systemic discrimination. When you have a hunch or a belief that an employer or an institution is practising some form of systemic discrimination, I am wondering what indices you look for to identify systemic discrimination. How do you go about doing that?

Mr LeBlanc: I think the same way that is now happening at the

federal level. Under the Employment Equity Act federally regulated companies must present a statistical analysis of the workplace, whether it is CN or other companies, and they are now doing that. There are such questions as: how many visible minorities, how many women, how many women in senior positions and women in low-paying jobs in your company? Then you are able to obtain a statistical analysis of a company and it is obvious that the company is practising systemic discrimination.

The difference is that you cannot say to a company, "You are discriminating against individuals." They could say: "Well, look at our hiring practice. We don't." Systemic discrimination means that the system—in other words, for example, the requirements for a position are not necessarily related to the job but the result is that they exclude a number of minority groups. So a company then has to revise its hiring requirements, for example.

Mr J. B. Nixon: Well, can I ask you this: How do you determine whether those hiring decisions are based on a collective ignorance or ill will or whether it is something deeper in that there is an unconscious decision made that whenever a job description is developed, certain attributes, characteristics or skills are looked for which might belong to one group and not another? I know I am being very blunt. How do you determine which is occurring?

Mr LeBlanc: I think what I was saying during my presentation is that ill will is not a factor, in my view. In systemic discrimination, I think we have to look at the American experience, because that is where it comes from. For example, when the government introduced its Equal Employment Opportunity Act, it was discovered that car companies in Detroit had no blacks employed.

When they did the interview, they asked, "Why?" "Well, they never make it." When they looked at it, they realized that the hiring requirement was grade 12 or grade 13, whatever it is in the United States, and the black population around the companies then had an 80 per cent dropout rate from schools. They asked, "What is the necessity of having grade 13?" Working with the company, they modified their requirements to enable one minority that had been excluded from the company for a very legitimate reason to be included.

A company can say, "We need a university degree or a grade 13," but when you are into systemic discrimination, you sit down with a company and ask, "Is a grade 13 really required?"

For example, educationally, women have not had the same opportunities as men, so if you maintain those high educational requirements, which are not necessarily job-related, then you know you will be excluding a number of minorities. It is a question of sitting down with companies—and I gather the commission would be doing that—and looking at what the job workforce is, what the workforce of such a company is, and looking at the requirements and asking, "What are the requirements of the jobs?" rather than saying, "You discriminated against an individual," taking them before a tribunal and spending two years. You are not resolving the issue and you are not changing the company.

Mr J. B. Nixon: I understand what you are saying, yes.

My next question is, there are probably at least two approaches to dealing with the problem of systemic discrimination.

Mr LeBlanc: Probably many more.

Mr J. B. Nixon: There are probably many more. One is to have a human

rights commission which is very active in the area of systemic discrimination taking on institutions and companies. The alternative is to make employment equity mandatory in the private sector, and anyone who does not have an employment equity plan that is approved by some government body or is in default of his employment equity plan is fined, jailed, whatever—punished. Of those two approaches, which do you prefer?

Mr LeBlanc: I think we should be doing both. We have to have a human rights commission that really is dealing with systemic discrimination. The employment equity, in my view, would be working with companies to help them develop an equitable workforce.

But systemic discrimination is something you would need human rights systemic discrimination specialists looking at and working on jointly with the employment equity people in a company. It seems to me it is a joint effort. Federally, that is how it is happening, though I would venture to say that the Employment Equity Act does not have the strength that is required federally.

Mr J. B. Nixon: My understanding is that the federal act is a complete illusion. It is a statement of good intentions.

Mr LeBlanc: At least it is giving you the statistical data which allows commissions and individuals to lodge complaints. To me, that is a first step. I do not think we have that yet in Ontario. We do not have that kind of statistical analysis of companies.

Mr Breaugh: I want to pursue this a little bit. First, I should put one of my concerns out. If we stay on the basis of individual cases now, and we are having great difficulty handling it on that basis, one of my concerns is that in Ontario, for example, we have made several legislative changes which have an impact on the human rights commission. French-language services are coming into effect in November, there are pay equity laws and there are equal opportunity laws. A raft of things are happening, so it is going to stir it all up.

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If we stay on an individual-case basis, and we have a backlog now, that backlog is going to get much worse in the coming years. But as I try to figure out in my own head where to go with this, the other thing that has occurred to me is that in addition to all of Ontario's laws, we have all the federal government's laws. We have two different levels of government going at this, and both seem to be very successful at missing the point completely.

You mentioned at the end of your presentation that perhaps one way to try to actually do something positive would be to try to bring together the federal government and its initiatives and the provincial government and its initiatives. Is there really a faint hope that such a thing might happen?

Mr LeBlanc: In answer to your specific question, when I was the director of the Human Rights Directorate in Ottawa from 1983 to 1984, the federal-provincial-territorial committee of human rights officials was dealing with this particular issue. This group has been in existence since 1977, and there seemed to be overlaps of jurisdiction. So they had begun then to examine what kind of approach could be taken jointly. Ontario was represented then by the executive director of the Ontario Human Rights Commission. It is provincial commissions across the country, plus the federal government. Where they are at now I really do not know, but it seems to me that it would be one

way of developing a joint effort and, especially, avoiding the overlap that I think you were talking about.

It is a serious issue. For example, I am not advocating that we do away with the individual complaints mechanism, but I am saying that over the years, and maybe over 10 years, we should shift the resources. If 10 per cent is now being devoted to systemic discrimination and 90 per cent to individual complaints, there should be a shift over a 10-year period. We cannot eliminate, in my opinion, the individual complaints mechanism, because there are many individual people who are still suffering discrimination, and that will go on. But if we continue dealing with individual complaints and do not deal with the real issue, then, as you said, we are not really making a dent in this whole effort.

Mr Breaugh: The other problem I am having—I do not know whether there is a solution to this—is that I have to admit that this is all terribly confusing to the individual who is out there. Try to explain to someone who has been aggrieved in some manner that, "Well now, there's the Ontario Labour Relations Board and you can do something there; there's the human rights commission and you can do something there; there's the Ombudsman and you can do something there; there's the Ministry of Housing and you can do something there; there's probably some local civil servant who is responsible for righting these wrongs and there's the whole federal government." What they wind up with is probably a menu of a dozen different avenues of redress. I wish I could tell them that one of those dozen avenues actually works, but I cannot.

I know that everybody wants to have his or her piece of the action. Every minister of labour wants to be able to say, "I'm in charge of the labour relations board and we solve all the labour problems," and to some degree, he does. I am sure the Ombudsman would not be anxious to give up some of that turf. But what I have is an array of agencies, none of which seems to work very well, all of which is very confusing to the public.

If someone is denied a place to live, is that a matter of human rights? Is it something for the Ministry of Housing to look after? What do you do with it? I have a very confusing menu to present to my constituents about what you do when something goes wrong. I do not mind that, but I wish I could say, "And this one works," but I cannot. Have you any suggestions about how we sort out some of this?

Mr LeBlanc: I think the different agencies that you have mentioned, from the Ombudsman to the human rights commission, have different functions, and they play different functions. If you go to the wrong one for the wrong reason, then you are bound to fail. If you go to the Ombudsman to have him handle a discrimination complaint, then you are going the wrong route. It seems to me that we have a plethora of agencies that have specific mandates. In my view, to put them all in one boat or under one hat would be more horrendous, because it seems to me that the commission has a specific mandate. Its mandate is to implement the act, which outlaws discrimination on the basis of a number of grounds.

The Ombudsman's function is to look at procedural ineffectiveness. He does not care whether there is discrimination; he just wants to see if the procedure was followed well or not, according to government standards. So we are talking of very different bodies that have very different *raison d'être*, and I would not mix them up.

I gather, as a member of the Legislature, you would know which agency to

send your constituent to. If you send him or her to the wrong one, then it could be, I agree, very frustrating.

Mr Breaugh: The problem is, there is no right one.

Mr LeBlanc: It depends on how you define "right."

The Chairman: We have two minutes left.

Mrs E. J. Smith: I will be very brief. I thought your point was very well taken about going after the principle of systemic discrimination rather than advocacy or dealing one-on-one with complaints. I do not know, I gather there is no one here from the Ontario Human Rights Commission.

The Chairman: The chairman is here.

Mrs E. J. Smith: Okay, fine. Thank you. I think it is really important to make that distinction, because you use a completely different type of person to do it. I was involved with the police, where we had a little task force set up to do this systemic thing, and they were going out—it is really salesmanship—and looking and talking to people about their employment practices and so on. That same person would be no good to you in an advocacy role.

I would assume that a budget would show these things, and it would be interesting to this committee, I would think, to show how much of the budget—and for you too, in answer to your question—is directed one way and how much another so that if, as you say, we wanted to consider changing the weighting of those things, you at least would know what we are doing now.

Mr LeBlanc: True.

The Chairman: Thank you, Mr LeBlanc, for attending this morning.

Next, we have the Heritage of Children of Canada, Sylvia Lusher. Perhaps you would like to take a seat at the front. You are well aware—you have been here quite often—that we have half an hour, and you can make your presentation. Perhaps you should give us a little background on the Heritage of Children of Canada.

HERITAGE OF CHILDREN OF CANADA

Mrs Lusher: Good morning, everyone. I am Sylvia Lusher. I know many of the Legislature members know me. I have been sitting in on the Legislature for more than three years. Many of you know the reason why I am there. For those who do not, I will enlighten them.

I am founder of a nonprofit organization, the Heritage of Children of Canada. The mandates of this organization are the rights of grandparents to access or custody of their grandchildren and children's rights. We have been fighting for the human rights of grandparents to be recognized in the courts. We have a lot of members in everyone's riding. Mr McLean, you know that; Mr Owen knows that. Every member in the Legislature has a problem with grandparents' rights.

The Ontario Human Rights Commission does not deal with issues which are the rights of everyone. Everyone talks about the rights of children, when there are no rights. When you think about it, you will see. Children are given

lawyers by the children's aid society or the official guardian's office, but are these rights or just adults telling children to do what they want them to do and think?

Families that have been broken by divorce or the death of one parent, or married couples who manipulate the other partner—husband manipulation or wife manipulation against the other's family—use the children as weapons against each other and grandparents. When children are taken out of their homes and placed in foster homes, the children are not questioned about their rights. There are no human rights in any of these cases. Children leaving home and winding up on the streets, no one questions their right to have a home and someone to care about them. The Ontario Human Rights Commission deals only with people losing their jobs or being refused housing, such as race, creed or colour; and even then, if there is a problem, it is put on hold for months. Referring them to the court, if they need assistance, refer them to legal aid.

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"Human rights" should mean what it really means. If you ask the people at the commission about the rights of access to grandchildren, they tell you they do not have any mandate to deal with that and to go to a lawyer. We have a Constitution and the Charter of Rights, but do we have the right to express ourselves or have the rights that are in the charter?

If you go to court and file an application for access to see your grandchildren, there is no status for grandparents. Many judges and lawyers throw the book at you and penalize you for bringing the application. No judge or lawyer should have the right to penalize a grandparent for seeking access or custody. The lawyer Morris Manning, who is very well known, said on television some time ago, "No judge putting on his robe should think he is God," which they do think they are, some of them.

There is also a copy of a letter sent by the lawyer to the Attorney General (Mr Scott), explaining what is happening in the courts. Mr Weingust, who wrote the letter, never received an answer from Mr Scott. You also have a copy of an article about a lawyer, now a teacher, explaining the importance of the grandparents' past in a child's life.

The children of today are tomorrow's leaders and the future of the country. We must stop and think. We all had better smarten up and realize what human rights mean. Every member of the Legislature, in his riding, has some sort of problem about grandparents' access, but no one brings up the issue to amend a law or mandate to the human rights commission. A commission should be set up to be able to take care of human problems, not just jobs and housing.

The human problem is unreal of what is happening to the human race. The human rights commission should be scrapped, and we should have a commission where the public and authority can work hand in hand to help each other. The funds that it costs to operate the human rights commission could be more useful to help in other ways.

I know the experience I have had. We have hundreds of grandparents in every situation, where parents passed away and the mother or father remarried, children were taken away. They do not know the parent who passed away. That parent does not exist any more. They bury their pictures with the past. The couples who are living together become nuclear families. They do not want any part of their mothers or fathers to know the children, which is their right.

I know every member in the Legislature has someone or a number of people

in his riding. I know Mr Owen is doing a very good job, because we have grandparents up in his area, in Barrie, and when they came to the meeting they told us, "He is doing an awful lot for retired veterans, but why does he not go out and ask these veterans if they can see their grandchildren? Why does he not ask them if they see their children?" Many of them are fathers, divorced and cannot see them.

We fought for Bill 124, as you all know. We did leave some kind of leeway for fathers to see the children and for mothers who cannot see children. There is going to be arbitration, the courts are going to be differently arranged. But what about grandparents? Where do they stand? What happens to us? We founded this nation. Whether it is the United States, whether it is Canada, whether it is Europe, the grandparents are the ones who brought these people into the world, yet we have nothing to say, no one to guide us and no one to help us. I am asking you here today, please.

Mr Silver: We went to court and we could not have access. The judge was God. He put a \$4,300 subpoena—

Mrs Lusher: Judgement.

Mr Silver: —judgement on her head that she shall never come into court. That is supposed to be real. We have the judgement. She can never come into court unless she pays it; but she cannot pay it, she is on a pension.

Mrs Lusher: And the judge knows, put it into the judgement, which I can bring to you.

Mr Silver: We have the judgement saying that anything—

Mrs Lusher: I do not have the finances and yet he put this on me to keep me out of the court.

Mr Silver: That should be realized, that no judge should have the access to do that. He should be real, not God.

Mrs Lusher: In the submission beside that, at the back of it, you have a letter of a lawyer who is now teaching in Ottawa. He states—I did not give it out, I should give it out, I have it here, I will give it to you—that grandparents are the background of this country and there should be no laws against them. I want to get it out; I will give it to you.

The Chairman: Thank you, we should get started. I think we have about six minutes each.

Mrs Marland: Mr Silver, have you or your wife ever taken a case to the Ontario Human Commission yourselves?

Mr Silver: We were up there.

Mrs Lusher: I was there; I was told they do not handle it.

Mr Silver: They do not handle anything like it.

Mrs Marland: Did you make a formal request in writing to them or did you have an appointment with an officer?

Mrs Lusher: It does not do any good. There is no such thing, even at

the Office of the Ombudsman. I called them; they do not handle those cases.

Mr Silver: We have tried everything. There is nowhere to go.

Mrs Lusher: There is a letter there from Mr Weingust, who was the lawyer for the organization, giving particulars of what is happening in the court. Mr Scott just ignored it.

Mrs Marland: You said something a few moments ago about, in some cases, where the first generation, not the grandparents but the parents, sometimes choose to ignore their parents, to ignore the grandparents.

Mrs Lusher: That is right.

Mrs Marland: And therefore their children never get to know their grandparents.

Mrs Lusher: That is right.

Mrs Marland: You also said when those parents choose to ignore their own parents, that is their right.

Mrs Lusher: That should not be. According to the law, your children have a moral obligation to you. They may not come to you, they may not want to see you, but they still have that moral obligation: you are their parents. There are people put away in homes, they are in hospitals, we have grandparents living alone in wheelchairs in their apartments and depending on social workers to come to see them. Their own children do not even call.

Mr Silver: Nobody comes.

Mrs Lusher: Their grandchildren do not even know they are there.

Mrs Marland: I think, Mrs Lusher, you are perfectly right when you say all of us on this committee have those situations which we deal with on a daily basis in our constituencies. But if it is not something that is legislated, it is very hard to force people to care for other people. It is impossible sometimes to force husbands to care for wives or vice versa, or mothers or children to care for their children. So although you say there is a moral obligation, in the real world it is not something that is very possible to enforce.

Mrs Lusher: Margaret, it is the real world. This is what we are living with.

Mrs Marland: I understand that, but I am saying not everyone faces his moral obligations.

Mrs Lusher: Right, I understand that.

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Mrs Marland: If it was demanded of people, through legislation, that they look after their parents—I am speaking as a mother of three people in their 20s and it so happens that in our family we are blessed because it is complete love and respect in both directions, but I have friends where that does not exist. What I am saying is, what you are looking for is a legal remedy.

Mrs Lusher: That is right.

Mrs Marland: I do not know whether the legal remedy would work, because if it was forced on my children to look after me and they did not want to, what kind of care would that be?

Mrs Lusher: No, I did not say to look after you. That is out of the question. They have their own lives to live. I respect that, but they do have an obligation to call you once in a while, to send you a card once in a while, to see how you are doing, which many of them do not.

There are thousands of children on the streets today. I made a submission to Mr Sweeney on Bill 107 last year that there were 22,000 children at that time on Yonge Street. These are the statistics. Of those children, 10,000 are registered as missing by their parents. They do not want to come home. The other 12,000 children are not registered as missing because the parents do not want to lose the bonuses, they do not want to lose any of that stuff and they do not care if the children walk out of the house.

Mrs Marland: But I want to be clear, because you are here today talking about children's rights.

Mrs Lusher: That is right.

Mrs Marland: Would it be in the children's interests if we forced them to do something? These young people who are on Yonge Street, of whom you have just given an example, if they are over 16 they have a right to choose to do what they want to do. That is their right. Are you suggesting that we force them to come home?

Mrs Lusher: You cannot force anyone, but you can have them talk to someone, you can have counselling. Make them understand what they are doing. They are going into prostitution, they are going into crime, they are going into drugs. Do we want that to happen to us?

We have a grandmother whose granddaughter was on the streets, on Yonge Street. She was 13 years old. When Mr Sweeney's bill went through that a youngster cannot be on the streets alone without an adult, this girl was picked up. She was given two alternatives: either to go back to her mother, which she did not want to do, or to a group home or to someone in the family. She went back to her grandmother.

Why can this not be done more where you get police out there, even plainclothesmen? Talk to the children, give them the alternative, do not let them get into trouble before it is too late. In another 10 years, I guarantee it, if I am here—I hope it never happens—we are going to have a very mixed-up generation. You will not have a Legislature like you have today.

Mrs Marland: It is easier to deal with them if they are under that age.

Mrs Lusher: Something has to be done, I am sorry. Mr McLean has a number in his riding, not just the one woman; there are more. We know what is happening to her. Her granddaughter was put into a foster home. They had no right to put her into a foster home. She could have kept that girl, but the government would not allow it. They put her in a foster home and the girl is now brainwashed. She is under medication. She does not even want to see her grandmother any more. He knows that.

Mr Breaugh: We had a little discussion earlier this morning about the independence of the commission. Mr Velshi, I think, made the argument that he wanted it to be under the government, not independent, because he wanted to make it clear—and this is the other side of the argument—that there is government policy at work and that it is going to work.

* That is what we got. It seems to me that, by means of this letter, you have put it right where it belongs, at the feet of the Attorney General. Would you give us a little assessment as to whether you agree with Mr Velshi's process, that this is the way it ought to be, that this is government policy, it is working well and at least you know whom to blame? Is that doing you any good?

Mrs Lusher: No.

Mr Breaugh: You say you would like to do away with the human rights commission. Let me explore that a little bit. Do you really mean that or do you really mean that you have not found any—in a previous discussion we went through the list. Has no one pointed you to the right place or is there a right place for you?

Mrs Lusher: There is no right place. The only thing everyone will tell you is, "Take it to the lawyer, appeal it." My God, how much money do you think grandparents have to appeal? How much can you drag into court? It is unbelievable. Then it happens that when the child gets old enough, the parents or whoever he is living with will say: "Look, they've made a mess. They kept dragging me into court, in and out of court. Do you want to go to your grandparents?" What is a child going to think? That you are just a troublemaker.

Mr Silver: Last year, there was a young fellow, I would say he must be about 28. A friend of mine says, "Can he come over to see you?" and I do not know this fellow. I say yes. Sunday morning he comes in at 10 o'clock. I say, "You have a problem, what is the matter?" He says, "I was raised in a foster home, not one but a number of them." He is a young man now but now he is saying to himself: "Who am I? I don't have relatives. I just know the people I was raised with. How can I find out my real ancestry?"

While that was happening, the radio was on and a bill at that time came through here in Metropolitan Toronto that anyone who wanted to see his relatives or find out more about them could come down to city hall for aid, that they would try to see if they could find out, according to his birth. I said, "You go to it and find out." So here is a young fellow raised in different homes who had nobody, and he felt sick as a dog.

Mrs Lusher: That is just one, but what happens to the children, like in my case? I talk about my own case. My son is married. His wife manipulated him against all of us. My grandson does not know who I am. In the court proceeding, my son told the judge that he shows my grandson pictures; he is interested, he is six years old. When I was in court last year he was four years old. He shows them and he is interested in who these people are. He shows them, "This lady is your mommy's mommy, she is not here any more; she passed away." Then he says, "Who is the other lady?" and he points to me and my son has the nerve to say, "This lady is a bad lady." Now what do you think this child is going to think for the rest of his life?

Mr Silver: This fellow has been brainwashed.

Mrs Lusher: And my son was always a good child. He has a very good education all the way around in every way and form and does very well for himself, and yet this is what is happening. But he is only one. There are thousands. I have situations where there are daughters doing it to their mothers and families. It is working both ways but the majority are the sons who are being manipulated. The husbands are the ones who are being manipulated mostly by the women. That is a very, very bad situation because if there should ever be a divorce, the husband has no rights to begin with, he has no family and he has been brainwashed to stay away from them.

Mr Silver: And the children, of course, know nothing.

Mrs Lusher: The children know nothing. They are just what they call a one-parent family. Even if they are married it is a one-parent family, because the other side is not even notified. You do not exist.

Mr J. B. Nixon: You came here today to talk about, I think, among other things, whether or not the human rights commission should be involved in access and custody decisions. I am going to put some words in your mouth just to find out whether or not you agree with me. I do not think you are really concerned whether the human rights commission gets involved in custody or access. What you are really concerned about is getting a system in place whereby you can obtain access.

Mr Silver: No, it has nothing to do with access.

Mrs Lusher: No, no. The human rights commission has a lot to do with this, for which it has no mandate. Wherever you go, if you call the Ombudsman, he does not deal with it. I was up there. I did question it. They only deal with jobs, race, creed and religion.

Mr J. B. Nixon: I understand that. I understand that they have a mandate to deal with rights issues that are different from the right you are interested in. Is it fair to say that we agree on that?

Mrs Lusher: No, you do not seem to get the point I am trying to make here. I am sorry. The wording of the human rights commission should be understood and should be very clear. The word "human" and the word "rights" do not pertain just to work and housing. They pertain to the person being hurt in any way, form or shape, whether it is at a job, whether it is in your home or whether it is a moral issue. And these are moral issues where they should be concerned.

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As far as work and housing go, as Mr Breaugh has just said, you have the Ombudsman and you have every—put them under one roof. Why have so many officers doing one thing and the other guy is doing another thing?

Mr J. B. Nixon: Okay. Let me ask you this question. Let us assume the Ontario Human Rights Commission had the authority or mandate to deal with all rights—moral, legal, political, physical—that you are suggesting, rolled into one body. How would you suggest that they resolve these issues?

Mrs Lusher: They would have to have an office for complaints on these issues and try to bring the people in who are involved. Try to make some kind of mediation, which does not work in the courts. Try not to spend everything you have in the courts and on lawyers. Try to make people

understand there are obligations in life.

Mr J. B. Nixon: Have you thought at any great length about how the mediation would work?

Mrs Lusher: I think the mediation would work very well.

Mr J. B. Nixon: What sort of process would you go through?

Mrs Lusher: The process would be to call on each party individually. Also to have a psychiatrist and a psychologist on hand. Try to summarize why these people are doing these things. It could be pressure on the job, it could be jealousy, it could be a fear of life. These are why these things are working this way.

You are old enough to be my son—I am a little bit older than you—

Mr J. B. Nixon: You do not know how old I am.

Mrs Lusher: Well, I am 65. Okay? But the thing is, in my day and age when children were at home everything was going right. If something was wrong the family got together. You do not have that today. I met a grandparent waiting for a bus last week. We started talking and I showed her what we are doing because we go around circulating paper to a lot of people.

She tells me she went to dinner to her daughter's house and the other grandparents were there, too, on both sides. There was a phone call coming in and her granddaughter picked up the phone. When she hung up, the girl's mother said to her, "Winnie, who was on the phone?" She answered very roughly, "It is none of your business." This girl is 16 years old. Her grandmothers were looking at her, everybody was looking at her, in amazement that she would answer her mother this way. Then she cooled down and she told her mother who was calling.

She was also told by this girl, who is 16, that if anything in the house happened, and you see it in every subway, in every bus, in every streetcar, it is on there, "If you have problems at home, call us. We will give you a place to stay and welfare will take care of you." Do you think that is right? We did not have it in our day. We did not have welfare. We were not told to leave the house if there was an argument inside.

Mr Silver: Why not settle the argument?

Mrs Lusher: Why not settle it right then and there? And this is what the government is doing, "We will put you on welfare, we will put you in a group home." I know a number of cases like that. They break up the home; they do not put the home together.

Mr J. B. Nixon: I just want to go back and ask you a question about the mediation system you were talking about. It reminds me of the biblical story about Solomon. Sometimes you have to make decisions, the mediator or the group, that someone is not going to like.

Mrs Lusher: That is understandable. I know that.

Mr J. B. Nixon: Let me ask you the question, what happens then when, having gone through this mediation process, whoever is the mediator says, "I am sorry, but this child will not rest with the mother but will rest with the

father and the father shall make all decisions as to who can and who cannot see the child"? What do you do then?

Mrs Lusher: Well, that is wrong.

Mr Silver: That is a wrong statement. Because when this kid hits 20, he leaves home.

Mrs Lusher: That is right.

Mr J. B. Nixon: Well, until age 20.

Mrs Lusher: We have had cases like that; they leave home.

Mr Silver: They leave home. We have had cases.

Mr J. B. Nixon: Okay. But until age 20.

Mrs Lusher: Right. Well, they can leave even earlier. They see nothing is going right; they will pick themselves up and they will leave.

Mr J. B. Nixon: No, but do you follow my point? Sooner or later someone is going to make a decision, and if someone does not like it, what are they going to do?

Mrs Lusher: That is the problem we have to work out. That is the problem with the mediators, that is the problem with the parents, that is the problem with grandparents and with the children. But children should not be used as weapons.

Mr J. B. Nixon: I agree with you.

Mr Curling: Mrs Lusher, I have seen you for the last four years in the Legislature and I want to commend you for the steadfast way in which you are committed to your cause. Many of these causes are championed because of frustration and other issues or discrimination or injustice itself. I understand your cause, but would you not say that the cause is even greater than the individual struggle you are talking about with you and your grandchild?

Mrs Lusher: That is right.

Mr Curling: As you have said quite well, in any one of our constituencies there are people there who may be having the same problems or frustrations as you are having now.

You mentioned something earlier on. You said that we have moved away from the extended family to the nuclear family.

Mrs Lusher: Right.

Mr Curling: It is because of how society has evolved, really.

Mrs Lusher: Right.

Mr Curling: So what you are doing and what we hope all of us here are doing is to make sure that there is representation and realization of the changes, that you are dealing with those changes and the realization of what

is happening, that especially any fast North American city or any great city wherever—it is not any North American city any more than any other that is fast—has become rather nuclear. That struggle is greater than the individual cause that you have.

Do you not think it is a matter of education? You have to come to the realization that that is what you are dealing with. There is this nuclear family that, as you said, could destroy and maybe the extended family could solve some of those problems.

Now I am coming to the specific question. You would say then that we should dismantle the Ontario Human Rights Commission, if I heard you right in saying that, but it is these areas that are sensitizing other areas and other groups so that we can deal with these issues and with the reality that there is a nuclear family.

Mrs Lusher: But Alvin, one minute. I also heard—there were commentaries on the news and on the radio—that the nuclear family is dying down. Children today are coming back home for different reasons, whether there is a breakup in the marriage or a child born out of wedlock. Whether they cannot find any work and cannot go on by themselves, the nuclear family is breaking up.

When this is happening, we have to be there. We have to keep the doors open to have them come back, to make them understand that they did make a mistake and come back to reality. They are living in another world. It is just like going to the moon. If they do not like it there, they are going to come back.

The Chairman: We have used our allotted time. I want to thank you for coming. I know very well what you speak about today, I admire you for what you are doing and I know the cases are there. Unless members or people are involved in it, they are not aware of the total situation.

Mrs Lusher: We have to let people know and we are doing quite a bit. We have put it into all kinds of community papers. We have a place where we do meetings once a month, and we do need people to wake up and know what is really happening. A lot of people do not even want to talk about it. They have been so hurt they just say, "I'm not going to speak about it."

The Chairman: Thank you for attending. Our next presenter is John Cordice of the Durham Ethnic Parents Committee. Would you like to come up and have a seat, Mr Cordice? You have 30 minutes allotted. You may use whatever time you like for your presentation and you may leave some time for questions, if you prefer. However, you have a maximum of 30 minutes.

DURHAM ETHNIC PARENTS COMMITTEE

Mr Cordice: My name is John Cordice. I am co-ordinator with Durham Ethnic Parents Committee and chairperson of the education and research committee of the Ontario Black Coalition for Employment Equity.

The Durham Ethnic Parents Committee is a committee formed by representatives from ethnic groups across Durham region from Pickering to Oshawa. Durham region is an area of very rapid growth, including a diverse mix of ethnic groups, changing the former population—small-town mainstream Ontario—of the area.

The OBCEE represents a cross-section of black and Caribbean groups and associations across Ontario, including Windsor, Thunder Bay, the greater Toronto area and Ottawa. Its mandate is to lobby for effective employment equity legislation.

There is no question that the Ontario Human Rights Commission has not performed its assigned task well. Our presence here today confirms this fact. If the commission is to be effective in the future, the reasons for its current ineffectiveness must be clearly understood.

Simply, the Ontario Human Rights Commission failed in its mandate because it served the system instead of the clients.

The system wanted a bureaucracy in place that would have a mandate to make it appear, on paper, that the public policy of equality in Ontario was being enforced. The clients wanted a commission that would handle their complaints in an effective and timely fashion to protect their individual rights in this province. Employers quickly realized that the commission was an aid to defuse and stagnate a human rights problem by having it swept into a quasi-legal bottomless pit of red tape. The problem, who happened to be their employee or an applicant, had long moved on out of frustration before the Ontario Human Rights Commission got around to dealing with the case. In many cases, clients felt they had jumped from the frying pan into the fire. On filing a complaint, many felt more discriminated against by the commission than by the persons the complaint was being made against.

To deal effectively with human rights in Ontario, one must be clear on the nature of discrimination in this province. Discrimination in Ontario is made quite complex because of the very diverse nature of the immigration patterns we have had. The aboriginal peoples of our province are discriminated against by almost everyone, thanks to a reservation system that served as a pattern for apartheid in South Africa. The mainstream population of Ontario is itself as diverse as the visibly ethnic groups in origins and time of arrival. Coming from countries such as England, Germany, Sweden, South Africa and Eastern Europe, their concepts of equity are very different.

There is no simple Ontario mainstream attitude regarding visible minorities. There is a varied collection of attitudes and practices of discrimination from around the world. The only constant is the way in which discrimination is handled at the various levels, based on division by class.

In the upper, well-educated classes discrimination is usually subtle and covert. The glass ceiling in employment, or use of subjective criteria such as "potential for advancement" and "image," are the methods of choice. Visible minorities at this level, or wishing to be at this level, do not readily accept that they are being rejected because of discrimination.

In the middle are those who are complacent in their comfort, house, car and employment. Few would jeopardize that to complain about readily evident discrimination.

At the bottom is the only place where discrimination may be open and direct. The victim here is usually in hourly work with little security and prone to job loss on a whim. If they are in a unionized position, their union executive is usually insensitive to problems of discrimination and the victim is on his/her own. So it is off to the human rights commission to get it fixed.

Many potential complainants report a similar reaction in filing a

complaint. The investigators make them feel inferior because they do not understand the process. The victim is made to feel as if he is being a burden on an already heavy workload, that it will take a long time to process. Further, is there anything else the victim can do to try to resolve the problem?

By this time, most of the victims give up and walk away from the problem. Those who pursue the matter then get a lesson in bureaucratic insensitivity, things like being called "the Jamaican man" by an investigator while the white people present in the same meeting are referred to as Mr X. The victim, possibly with a grade 9 education, is expected to file notes on the complaint comparable to a university thesis.

The bottom line is that corporations and even public agencies now encourage victims to go to the Ontario Human Rights Commission. It is their way of eliminating a problem.

Think of the parent trying to pursue a case against a school board. Years later, while their child is destroyed in the education system, the problem is not resolved.

If the government of this province really wants to make the commission effective, the Minister of Citizenship will have to be prepared not only to take responsibility to make it work but to police and administer the commission with a system of checks and balances.

Proposals:

(a) That employment equity legislation be passed by the government covering the public, extended public and private sectors, including the Ontario Human Rights Commission;

(b) That Ontario Human Rights Commission staff be subject to regular performance appraisals by a process that includes feedback from their clients;

(c) That all Ontario Human Rights Commission staff be given effective training on ethnic and cultural diversity issues;

(d) That the government review its separation of agencies so that equality in Ontario is pursued with common purpose and resolve. Human rights, employment equity and cultural issues must be working jointly if any one of these issues is to be effectively dealt with;

(e) That the process of handling a complaint be streamlined by separating the elements of criminal assault from those of systemic discrimination. If a child is assaulted in school by other students or staff, the commission should call in the police and assist the victim to have it dealt with in the justice system;

(f) When there is a complaint of systemic discrimination, the investigators should ensure that the victims are supported through the process in a manner that preserves the dignity of all involved. The Ontario Human Rights Commission should be empowered to use police investigative methods such as search warrants;

(g) That an unclouded message be sent to the public, backed up in practice, that the commission is no longer a salvation for those who discriminate in our province.

While money and staff will help the problems of the Ontario Human Rights Commission, the crux of this problem is simply the will of those in positions of authority to have the resolve to make the Ontario Human Rights Commission fulfil its new mandate.

The Chairman: We have approximately six minutes left for each party.

Mr Curling: I was going to ask you a question regarding how the human rights commission could be able to deal with systemic discrimination in a corporate way and also to deal with the individual case, but I realize you have pre-empted me in your suggestions here on how it could be done.

I will ask you this question then. We have heard presentations here both in the report that was done by Coopers and Lybrand and also by two members of the civil service looking at the human rights commission. Seeing that you have had a very personal relationship with human rights and with people coming to you with cases, the question I would like to ask you is about the present morale of the human rights commission. Do you think it is in a position now to be able to handle some of these recommendations and the direction it is going? I know you talk about training and all that, but sometimes training does not even help. Do you think at this moment that the morale is such that it could handle some of these recommendations you suggest?

Mr Cordice: I am assuming that two assumptions were made to bring us to this point. One is that if you hire investigators at the human rights commission, because they work for the commission they are very sensitive, caring people who would not discriminate. But it appears that the employees of the human rights commission are people just like the rest of us.

The problem is that they cannot afford to be like the rest of us because of the nature of the problems they deal with. I am suggesting that we cannot assume that because somebody is an employee of the human rights commission, he does not need very extensive and in-depth training and sensitization.

Second, I have come across cases where investigators with some very sensitive cases have in some cases claimed—and they will not go on the record on this, so neither can I—that they were ordered not to proceed because of the sensitive nature of the complaint and the size of the bureaucracy the complaint is against.

We have a matter here of just moral fortitude within the organization to proceed even if it looks like the system you are going up against has great power or influence. This influence would usually come in at the middle-management level, so the investigators really do not have much choice in dealing with that. They carry in their case and somebody looks at it and says, "I don't think there is any merit in this one." What is the investigator going to do? They have no recourse at that point.

Those are some things that can be done within the existing framework.

Mr Curling: Let me ask you a second question. In your first proposal you say that the government should proceed, "That employment equity legislation be passed by the government covering the public and extended public and private sectors."

Do you see doing both at the same time or doing the public sector first to say that the government is serious about employment equity and getting its house in order and then proceeding to the private sector?

Mr Cordice: That is a shrewd political movement and gets you out of too much of a "backlash."? I think at the very least the extended public sector, and by that I mean things like school boards and corporations, is essential.

The school boards are vital if children are to grow up in this society in Ontario and understand that different people can be in positions of power and control, ie, teachers and administrators. If the nonvisibly ethnic children come out of the school system believing that the only people who can be in power and control are like themselves, what happens when they go into the workforce and their first supervisor happens to be a black man? Here you have a white student who, because of the system he went through, believes that power and control are only in the hands of people like himself and there is a black supervisor telling him what to do. He could very well end up in a position where he would lose his job because he cannot handle that situation.

We do not always have to look at the impact on the visible minorities getting into the system, we now have a situation where we have to look at the impact of the nonvisible minorities getting into even the existing system. In the school boards it is vital that employment equity get into place as soon as possible. I do not think that could wait until the government cleans up its own backyard in the immediate public service.

Mr Curling: You are answering by saying that it should be done at the extended---

Mr Cordice: Extended public immediately.

Mr Curling: And private?

Mr Cordice: Private would be phased in.

Mrs Marland: On page 2 of your presentation, in the fourth paragraph, you make a very interesting statement that I would like you to enlarge on, if possible. You said, "There is a varied collection of the attitudes and practices of discrimination from around the world." Obviously South Africa is a very well known one to most of us, but I wondered if you had any other examples of what is going on here in Ontario that is in other parts of the world.

Mr Cordice: Just to illustrate what I mean by that clearly, the average visible minority person who is in the workplace and has a boss who appears to be white assumes that he is a white Canadian, ie, a white, middle-of-the-road, Canadian-born individual. In most corporations and large companies, that is not the case. Most of the people who are assumed to be white Canadians are in fact white immigrant Canadians from some other country.

What happens then is that you find a situation where the boss will very quickly try to find out where the employee is from, "Are you from the Caribbean, Africa, India," whatever it is? The boss then understands whom he is dealing with and what his cultural background is like and what his likes and dislikes are, what his biases are.

But the employee, having made the assumption that the boss is a white Canadian, might, let's say, be dealing with a South African or an English person who has very different perceptions of different groups of visible ethnics. In one country they might not like blacks, in another country they might not like East Indians, in another country they might not like Jews, but

the employee does not know because he made that incorrect assumption, and this is what I am saying. They do not know what to expect, they do not know how to deal with the individual, or something untimely might be said that might create friction, but there is that large hole we have in this province. You are never quite sure what you are dealing with. You just make this one concrete assumption that any white manager, for instance, is a white Canadian.

Mrs Marland: I know that you are very much aware of the allegations that were made against the Ontario Human Rights Commission earlier this year, which is the reason this matter was referred to this committee. How do you feel, as a representative of your Durham Ethnic Parent Committee, about the possible work of the Ontario Human Rights Commission to exercise its mandate and its responsibility to all of us? How do you feel they can carry that out when there are allegations that have not been cleared up one way or another as to whether they are fact or fiction currently in Ontario? Do you feel it is possible when the Ontario Human Rights Commission itself is alleged to have exercised discrimination in its own hiring practices?

Mr Cordice: I did not mention it in this presentation, and that was on purpose, because I feel that if the Human Rights Commission, the whole bureaucracy of the commission, were subjected to a firm employment equity program, then that allegation would have been very difficult to substantiate.

Mrs Marland: If it had an employment equity program?

Mr Cordice: I think that if it had an employment equity program, that would mean that throughout the whole structure of the human rights commission it would have been reflective of the populace of the province, and therefore you could have eliminated a lot of that from happening.

Mrs Marland: As for the fact that it does not have one at the moment and problems exist, you are saying that to remedy those problems, it would have to have that kind of program.

Mr Cordice: Yes. That would eliminate those allegations from continuing to come up and staying in place. It is essential that the people who advocate rights take up some of these practices in a public way.

Mrs Marland: Can I just ask you about your statement about school boards, where on page 3 you say: "Think of the parent trying to pursue a case against a school board. Years later, while their child is destroyed in the education system, the problem is not resolved." Do you have examples where children have been destroyed in an education system in Ontario?

Mr Cordice: The process of destruction of children can be open or it can be just a quiet process that happens. Most of the destruction of children, as I see it, is in the form of withdrawal. The child has a problem in school, it is perceived to be racial and the family has to go through the bureaucracy. Then you have a situation where the principal backs the teacher, the superintendent backs the principal, the trustee backs the superintendent, and then you try to get to go to the school.

By the time you get to the Ontario Human Rights Commission and it opens up the case, the child is still there in the situation. There is no protection for the child while the process is going on. Many of the parents do not have the bureaucratic knowhow to deal with the situation while it is under investigation. A lot of them, because they know how long it is going to take and because of the size of the bureaucracy they are dealing with, simply

withdraw from the system themselves and the child also withdraws into a shell to try to survive the rest of the time through school.

Mrs Marland: Do you have an instance where that has been the case, a problem in a school board, and it has ultimately been referred to the Ontario Human Rights Commission?

Mr Cordice: It has got to the point now where I myself have, on occasion, advised parents not to take it to the human rights commission, because as soon as you take it to the human rights commission, the school board has an out. It says, "We cannot discuss it any more; it is under investigation," and it sits there in limbo for several years.

It is easier to try to work with the parents to help them assert themselves against the bureaucracy to force the school board to do something. The human rights commission is an out for the bureaucracy. Once you have signed that line for a complaint, it is a legal process and you hear, "I am sorry, we cannot discuss it with you any more," and everybody sits and goes into limbo. The kid is the only one who suffers.

1150

Mr Philip: I missed part of your presentation. I apologize, but I had to attend a funeral in my riding. I was interested in the comment that you have on the bottom of the first page, "Employers quickly realized that the commission was an aid to diffuse and stagnate a human rights problem by having it swept into a quasi-legal bottomless pit of red tape."

We have had a number of complaints about the length of time it takes for the human rights commission to process complaints. The suggestion has been made by others appearing here that this is a way by which employers can have a complaint diffused, whether by intent or simply by opportunity, if you want. Do you feel that if the human rights commission were more effective in processing claims quicker, that would have a positive impact and help to eliminate this problem of diffusing it through length of time?

Obviously, if it takes five years to process a complaint, it is defused. A lot of the people give up or, if they know that it is going to take a year to get their job back, they will look for another job because you cannot live on air and promises. What is your feeling on that? Is the length of time in processing a major problem in the defusing?

Mr Cordice: It is the major problem. The best of systems do not work if they do not get the job done or if they take too long to get it done. It looks fine on paper; reality is what we are dealing with. The reality of the situation is that it takes too long. Three years is not abnormal. At the end of three years, it is not that it is finished; it is just that you have got a ruling from the commission and have to find out if you have enough money to legally pursue the process if you do not like the outcome.

I think what has to happen is investigators have to be empowered—and this is why we use the reference to police-type measures—to directly go in and investigate, to directly interview people and get information, to make a much earlier judgement call and to get a handle on the process while the body is still warm. Freezing the body and putting it away until you have enough manpower to get back to it does not do a very good autopsy. It has got to be more relevant to the time at which it is happening and to the people who are involved. The whole process has just got to be more timely.

Mr Philip: Do you feel that the human rights commission is in any way compromised by being both an investigator or a policeman and a judge? Should the judgment function be separated from the human rights commission or do you feel comfortable with having both the investigative and the judgmental under the same roof, but in different departments?

Mr Cordice: I think the problem with that is there already exists a judicial process for dealing with judicial problems. For example, if one kid shoves another kid in school and calls him a nigger, that is assault. So let us deal with it as assault. When that gets reported, it is assault. You call the police, you get the juvenile branch, you do an investigation and you deal with it as assault. That does not tie up the commission for three years with bureaucracy to decide that maybe the kid was discriminated against and they should not do that any more. If you separate from within the commission that which already applies under the judicial and Criminal Code, you would remove a lot of the immediate problems from the commission and it could carry on with the systemic stuff.

Mr Philip: Is that not done already? It depends on who the intake is. If somebody comes to me—I will give you a very concrete example, where a group of Sikh elderly gentlemen complained to me that some young people were throwing eggs at their wives and their daughters. In a case like that, I did not bother going to the human rights commission. I picked up the phone and I had a meeting with the local police department, 23 division, and I said, "This is unacceptable and I want you to do something about it." The problem stopped. They went out. They talked to the kids. They had a meeting with the kids. They had some of the leaders in the Sikh community meet with the children; and they understood in no uncertain terms that it was inappropriate behaviour, that remedial action very quickly would be taken against them and their parents if it happened again, and then we set up other kinds of programs to try and change attitudes after the negative behaviour was stopped.

But what I am talking about in terms of the quasi-judicial aspect is that the human rights commission does make judicial decisions after an investigation is done: Yes, the employer discriminated. Yes, the employer should rehire or compensate or in some way deal with the problem. I ask you: Would that judicial function be perhaps better off in some other branch such as the Ombudsman of Ontario, for example, or separated more from the investigative and the facilitative role, which is what the human rights commission is supposed to be doing in pointing out to employers that they are not allowed to do things like this and pointing out that they will lay a complaint against them in instance A and C and Z? Is it better to carve off the judicial or quasi-judicial from the investigative policing?

Mr Cordice: The judicial system within the Ontario Human Rights Commission is a bad mirror image of what already exists. If you have a judicial problem, deal with it with the judiciary. If the judiciary says that, as part of my sentence, these people should be dealt with and sensitized, etc, then they could put the commission to do that problem. Keep in mind that whatever you do, most large corporations have the money to appeal, so it is going to become a judicial process anyway. You might as well leave the judicial part of the system to the judiciary. It is in their ballpark anyway.

Mr Philip: Let me just throw out at you, though, that one of the arguments against that is that going the judicial route is expensive to the client in many cases unless the crown lays the charge, is often even longer than dealing through the quasi-judicial system, and that the onus of proof is much more rigorous than in a quasi-judicial setting, and therefore the very

people who might be hurt by that kind of judicial system might be the complainants. Do you have any comments on that?

Mr Cordice: The direct cases can be sent straight to the judiciary and the human rights commission can be funded to supply legal assistance in the form of legal aid to somebody who has made that kind of complaint. That would cover the cost and the speed of the process. But those that are very broad systemic issues, obviously you are not going to get a hard criminal case fought out of it very quickly, so those can be handled within the commission body. That would be the separation.

The Chairman: Thank you very much for your presentation.

Members, we can either go into camera as a committee or the subcommittee can meet.

The committee recessed at 1158.

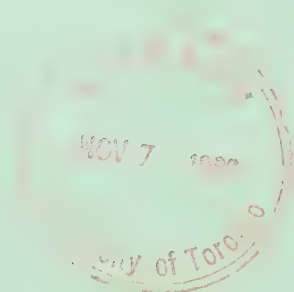
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STANDING COMMITTEE ON GOVERNMENT AGENCIES

ONTARIO HUMAN RIGHTS COMMISSION

WEDNESDAY 4 OCTOBER 1989

Afternoon Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

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South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

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Kanter, Ron (St. Andrew-St. Patrick L) for Mr Ballinger

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Farnan

Smith, E. Joan (London South L) for Mr Miller

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

McGarva, Bernard, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Ontario Public Service Employees' Union:

Upshaw, Fred, Vice-President, Treasurer

From the Ontario Federation of Labour:

Signoretti, Ken, Executive Vice-President

Veacock, June, Director, Human Rights

McClellan, Ross, Political Education and Legislative Director

O'Connor, Terry, Executive Board Member

Individual Presentation:

Szoboszloi, Zoltan

From the Canadian Association for Free Expression:

Fromm, Paul, Director

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 4 October 1989

The committee resumed at 1407 in room 151.

ONTARIO HUMAN RIGHTS COMMISSION
(continued)

The Chairman: I call the standing committee on government agencies to order. We will continue with our deliberations on the Ontario Human Rights Commission. Our two o'clock appointment is with the Ontario Public Service Employees Union. Mary Rowles and whoever else you have with you, perhaps you would like to move up to the tables to the front. You have a maximum of one hour—I am sorry, I mean half an hour. You may use whichever portion you like for your presentation and the rest will be reserved for questions. I know that you would like to go on maybe for an hour, but a half an hour is what we have allowed all delegations in groups. You may proceed.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Mr Upshaw: Thank you very much. You had me a little excited there when you said I had an hour. I was getting ready to put in a few more comments here.

My name is Fred Upshaw and I am the vice-president/treasurer of the Ontario Public Service Employees Union, and with me is Mary Rowles, co-ordinator of special events and education for OPSEU.

Human rights are about the highest ideals and finest sentiments in human history. That is why pledging allegiance to human rights comes easily to every decent person, organization and government.

But human rights commissions are not about high ideals, fine sentiments or rhetoric. To be effective, commissions need funds for public education. They must have the backing of government to take independent, critical and harsh measures against human rights violators and to develop hard-edged policies that get to the root of systems of prejudice that are built into this society.

This legislative committee has the choice to endorse one of two approaches to the Ontario Human Rights Commission: It can repeat high-sounding phrases about the importance of human rights, or it can direct its attention to the support needed by the human rights commission if it is to do its job.

In the wake of the controversy and turmoil caused by the resignation of the chief commissioner last spring, it will be tempting for politicians to take the first approach; but the second needs to be taken if this committee is to grapple with the deep-seated problems of the Ontario commission. Those problems still call out for resolution, and the controversy and turmoil surrounding the commission will not disappear until they are resolved.

The Ontario Public Service Employees Union asked to appear before you to urge you to take up the challenge of providing the support needed by the commission to do its job.

Our own commitment to that course is based on our experience representing 100,000 workers. A significant proportion of our members are women, workers of colour, natives, older workers and disabled workers who face discrimination inside and outside the workplace. We have launched human rights complaints with the commission on behalf of individual members and members of the public. As a union, we have firsthand knowledge of the difficulties besetting the commission because we represent the staff of that agency. In collective bargaining, in labour-management meetings and in reports to consultants we have supported staff efforts to improve working conditions and the level of service at the commission. Our submission today builds on our experience. Much of the information presented here is based on recent discussions with commission staff.

Our first point is about money. Penny-pinching in the area of human rights enforcement carries a high price. The cost of permitting discrimination to flourish in our society may be harder to calculate than the cost of higher wages, more staff and more equipment, but the social and human costs are very real. Yet underfinancing has long caused a crisis in the workings of the commission, and despite a recent increase in the commission's budget, money shortages remain at the root of ongoing problems experienced by that agency. The long delays in handling complaints, morale problems among staff, disillusionment in the community, the inability of the commission to fight systemic discrimination, the limited research and policy analysis, the lack of communication with disadvantaged communities and the lack of public education on discrimination can all be traced to lack of funds.

Unacceptable case backlogs are the most obvious result of government underfinancing of the commission. In 1987, the Coopers and Lybrand study showed that staff levels had not increased at the same rate as complaints. Complaints increased by 148 per cent from 1981 to 1987, but staff only increased by 81 per cent. As a result, case loads went up 41 per cent while the number of cases backlogged more than six months went up 154 per cent.

Although the last commissioner made major efforts to reduce the backlog by adding new staff and improving procedures, the spring 1989 report to the deputy minister indicated only a 12.5 per cent improvement. Our members report that complaints can sit as long as three months before being assigned to an officer for action and that on average it still takes 10 months for resolution.

The reaction time of the commission remains unacceptable. In June of this year, for example, our union asked the commission to initiate an investigation into a complaint by union activists that family benefit recipients in the Toronto area were subject to racial discrimination in the determination of benefit levels. As of today, our request has not been acknowledged by the commission and we are not aware of any action that has been taken by it.

Without additional funding, the systemic unit will exist in name only. The current budget provides for a skeleton staff which, under the best of circumstances, can deal with only a handful of projects. Yet the systemic unit is one key to reducing the crushing load of complaints and to enhancing the preventive work of the commission. It can identify the often invisible processes and everyday practices built into the fabric of our polite society.

A systemic unit can examine and resolve the traditional height, weight and clothing requirements which seem reasonable but which exclude certain groups from certain occupations. It can deal with traditional equipment and construction practices, like two-door washrooms that shut out those in

wheelchairs; the practices that are designed for the mainstream population. It can deal with the practice of streaming in schools which put entire groups of children at a disadvantage. On any given day, these processes and practices, the unthinking expressions of prejudice, subject more people to discrimination than a convention of white supremacists. A fully functioning systemic unit at the Ontario Human Rights Commission can address these problems and prevent the occasion for many individual complaints.

But the commission still lacks money to record and analyse its own behaviour. It does not have the computer equipment or the capacity to store and retrieve information on the complaints it handles: their nature, origin, or similarities in disposition. It lacks the computer system or programs to track and analyse decisions or precedents being set in cases of a similar nature. The commission is one of the few government agencies lacking this computer capacity, and this under-resources funding denies it the technical data required to monitor developments and establish consistent policies as well as policies that are forward-looking.

Public education is another area in which the commission must increase its activity to ensure that public attitudes keep pace with changes in our society. Because Ontario's composition is changing and the expectations of all members of society are increasing, the commission has an important role to play in encouraging dialogue between groups in our communities and in promoting an acceptance of diversity and an understanding of human rights. Without resources, the commission cannot increase its efforts in this regard.

Section 28 of the Human Rights Code outlines a number of functions for the commission. It can recommend affirmative action plans to employers, it can undertake research to eliminate discrimination and it can review the laws to ensure they conform to the code. The commission can investigate community tensions around specific incidents, develop programs to counteract trends and it can review government programs and practices that jeopardize the code; but it is unlikely to fulfil this broad mandate without substantially increased resources. Caught between the grinding weight of the numbers of complaints and a thin budget, the commission will be obliged to focus limited resources on complaints resolution. Only substantial budget increases will permit the commission to fulfil the other aspects of its mandate and reduce case loads in the long term.

One other problem that money can help solve is the long-standing morale problem at the commission. Despite a four-year struggle by human rights officers to have their jobs reclassified and their wages increased, the government still refuses to recognize the contribution these workers make. Labour relations officers, for example, make as much as 24 per cent more than human rights officers at the commission.

Yet working for the commission requires patience, sensitivity and an ability to adapt to new and complex situations. Officers must be able to deal tactfully and skilfully with clients from a wide variety of backgrounds and they must be able to translate the needs of complainants into a legalistic context and negotiate a solution.

Similar skills are required by labour relations officers and human rights officers, but one group is much better compensated, perhaps because the work of labour relations is connected to the more easily identified costs of labour disputes. To the human rights officer, it seems that they are undervalued because the enforcement of human rights is undervalued by the government. The low morale caused by their long-standing wage complaint could be alleviated by increased funding.

But it is clear to us that money will not solve all the problems of the human rights commission. Having the right number of staff with the right mix of skills is no guarantee that their efforts will be co-ordinated to best effect. Indeed, proper co-ordination of the commission's staff and the effectiveness of the commission will require major changes in the labour relations culture of the agency.

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Last spring's crisis at the commission fed on the public's expectation that the commission will set an example of the employment practices it seeks to promote. That has never been the case at the commission. It is not the case now.

As this committee sits, the human rights commission refuses to declare its opposition to human rights violations in its dealings with its own employees. The last chief commissioner agreed to the request of bargaining unit staff to establish an employee relations committee to deal with ongoing labour-management matters. The present management has refused to insert an antidiscrimination clause in the agreement establishing this committee.

So while the commission is circulating draft guidelines to the public that encourage employers to acknowledge their obligations under the code and to set up internal processes to deal with complaints of discrimination, the commission refuses to follow its own advice.

Similarly, the commission's new employment equity policy was never discussed at the employee relations committee. It was circulated to all staff with a request for individual comment within three days. The policy was finalized without input from union representatives.

This violates basic established practice in regard to the development and implementation of employment equity plans. It ignores in this case the important contribution that could be made by workers who have lived with the results of systemic discrimination in the past and whose careers will be determined by the new rules.

Again, the organization that should set the pattern has repeated old patterns and opened up all the old pitfalls in the practice of employment equity planning.

Other current management practices at the commission also give cause for alarm. Commission staff learned at the end of September that three middle-management positions were awarded without competition. A senior management position was also awarded without a competition, despite the fact that the person who received the job does not come from one of the target groups. Such management practices, which are only permissible with a written waiver from a deputy minister, are inappropriate given the furore over hiring practices under the previous chief commissioner.

One problem that is both financial and administrative in nature is the lack of staff training. Of course, any organization that does not provide an ongoing, systematic and progressive system of employee training is almost bound to make promotion decisions on an arbitrary basis. An organization that does not train is an organization that does not plan its future; it just bumps into it. An organization that does not train is an organization that does not respect its members' right to learn and grow.

It is almost impossible to incorporate employment equity into such an organization. The values of a nontraining organization are too biased towards helter-skelter adjustments, towards making do, towards doing things the way they have been done, towards keeping a monopoly of skills among those already in positions of power.

In a nontraining organization, someone who fits in, seems enthusiastic or is a team player will be chosen—that is, someone who makes current managers feel comfortable. The commission fails to meet the most minimal requirements of a training or learning organization. Thus, it will be no surprise when it fails to meet its employment equity obligations.

The commission's training efforts are and have long been a disgrace. There is no training unit. There is no ongoing program. There is no library on site. There is no culture of collegiality or information-sharing, no practice of calling staff meetings to discuss new cases or developments. There is virtually no formal or informal training and learning process. Yet this is an agency where the range of problems requires high levels of sophistication and constant renewal of insights and information.

The commission's record is the legacy of a management rights clause in legislation that gives managers total and unilateral authority in the field of training. Employment equity cannot proceed effectively until that monopoly is broken down and the workers, through their union, are given a say in the kinds of training programs needed.

These, then, are some of the problems that money cannot fix at the human rights commission. Dealing effectively with employment equity means getting on target with a host of training and other programs. Dealing effectively with employment equity means opening the organization up. It means job competition for all posts. It means listening to constructive suggestions from workers and the union. It means having the guts, independence and vision to actually state that the organization opposes human rights violations in its employment practices and is prepared to use existing processes to resolve complaints. Without such obvious changes, employment equity at the commission will never be anything but tokenism.

Human rights administration does not take goodwill; it takes strong political will. It takes courage and integrity for a government to fund a commission that will back unpopular causes, that will take on the power structure and that will even take on the government's laws and practices when necessary. A commission that will not do that is not worth having. For that reason, we are submitting proposals that can strengthen the advocacy role and independence of the commission.

Some human rights activists are so disillusioned with the commission that they have given up on reforming it. They want it dismantled and propose to have Human Rights Code violations adjudicated in the courts. OPSEU is opposed to that model of human rights administration enforcement. The court system itself is inevitably biased in favour of those who have power. Complainants have to pay for lawyers and court expenses. We believe that is unsuitable for the victims of prejudice, who commonly suffer discrimination precisely because they lack power, money and access.

The mandate of the commission cannot be fulfilled by the courts, and we strongly oppose the suggestion that commissions can be replaced by the court system. However, we do believe that the commission should take court action to reinforce decisions where relevant. The commission already has statutory power

to do that under section 43 of the code. It should be encouraged to exercise that power where appropriate.

The exasperation and disillusionment of community activists with the commission reflects the fact that while the commission may not be distant enough from government, it is far too distant from the community it was designed to serve. Its processes are confusing and poorly understood. Its commissioners, with the exception of the former chief commissioner, are anonymous. We believe that restoring public confidence in the commission requires the establishment of a new and public procedure for appointing and confirming commissioners. We ask the committee to consider the advantages of having the government's nominees for the position of chief commissioner reviewed and confirmed or rejected by an all-party committee of the Legislature.

We propose that the chief commissioner, not the government, should be responsible for drawing up a list of commissioners with the balance of skills needed to make effective decisions. That is the way appointments are made to other expert bodies in the fields of pay equity, workers' compensation tribunals, securities administration and the like. Granting that right to the chief commissioner is a way of signalling respect for the expertise involved in human rights administration.

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But the chief commissioner's list should also be reviewed by an all-party committee of the Legislature. This recommendation is in line with the logic of the 1985 federal special committee on the reform of the House of Commons. It extends the logic of Ontario's 1986 Report on Appointments in the Public Sector. It is consistent with recent commentaries on the political processes in Ontario, like *The Ontario Legislature: A Political Analysis* published by Graham White. It is also consistent with the practices introduced by the Social Assistance Review Board. The committee should measure all nominees against established criteria, which should include knowledge of human rights legislation and issues, a personal history of community activism and representativeness.

At present, commissioners are chosen by the government in power, and appointments appear rather whimsical at times. Individual commissioners, like Rabbi Gunther Plaut and Jack Diamond, have conceded in public statements that they had no specific expertise at the time of their appointment. For example, in a *Globe and Mail* article in 1985, in which Rabbi Plaut discussed his years at the commission, he acknowledged he "knew little about and had no conception of what its tasks were, how it functioned and what personnel served it" when he first signed on. Without questioning the commitment and contribution of Rabbi Plaut, it is possible to suggest that the commission and the community would be well served by the establishment of some criteria for use in appointing members.

The human rights field is inevitably controversial because it challenges the way powerful people make decisions. Chief commissioners and their staff must feel confidence that they will receive backing for tough decisions. The government must be prepared to feed the hand that bites it.

The minute that powerful groups believe they can override commission decisions by appealing to powerful politicians, the very integrity of the human rights commission is threatened. Opponents of human rights will hold out to the last in hopes of going over the commission's head.

To sum up, OPSEU is appealing to this committee to endorse changes in three areas of commission work.

We are asking the committee to recommend a major budget increase that at least matches the hidden costs of the failure to promote human rights. For this fiscal year, the budget increase should be in the area of \$8 million, as outlined in the last year's budget proposed by the commission.

We are asking the committee to endorse changes in the administrative and labour relations systems of the commission. Those changes must empower commission staff to deal with their responsibilities in a constructive manner, to assist in the implementation of employment equity and to help fulfil the commission's mandate.

Finally, OPSEU is asking the committee to endorse legislative changes that guarantee the advocacy role, independence and expertise of the commission. Specifically, we want to see an end to political appointment of commissioners. Generally, we want to see encouragement of strong advocacy actions, including court actions against offenders. We want to see norms established that respect the autonomy of the commission.

If change is introduced in these three areas, we believe the commission can make enormous strides in fulfilling its mandate.

Mrs Marland: This is a very powerful presentation and obviously a very important presentation for this committee to hear. It is a very grave concern to hear from you that there are ongoing management practices today, as you said, as the Ontario Human Rights Commission sits, that would give cause for alarm, to use your own words. When you say that the Ontario Human Rights Commission refuses to declare its opposition to human rights violation in its dealings with its own employees, I find that is a very, very critical statement.

When you say that the current management practices that give cause for alarm are as recent as the end of September 1989, and that three middle-management positions were awarded without competition, obviously, you have your members who are coming to you with nowhere to go. Because, normally, if they were on staff in any other agency or public or private sector position, they would appeal to the Ontario Human Rights Commission. The irony that these people with serious grievances are employed by the very body that is required to enforce fair hiring practices around this province leaves them no alternative, does it? Do they have any alternatives; do they have any recourse, these people who are staffed within that very body whose mandate is to make sure that these kinds of hiring practices do not happen in Ontario?

Mr Upshaw: Their only recourse, of course, is to complain to management when they see these discrepancies through their employee relations committee setup. I might add that it is not just this particular commission that has policies with respect to not posting positions for very important—well, posting the jobs for very important positions. It is done in other agencies of the government as well.

Mrs Marland: In other agencies they could appeal to this commission. That is the irony.

Mr Upshaw: That is true.

Mr Philip: Thank you for an excellent brief, which I think

compliments some of the other excellent briefs that we have had very nicely. In addition to the very specific recommendations which you cover in the back few pages, if I were to pick out the one single most important message or concern that you are trying to convey, would it be that there is a failure on the part of the human rights commission to deal with systemic problems? And would you say that is the major concern that you would have, in addition to what I would call the more technical concerns that could be, perhaps, dealt with in a very specific manner?

Mr Upshaw: What you say is true, but they cannot do too much without proper financing. I see that as a very important role there, in that this committee could certainly recommend that they increase the financing so that the work that is expected of the people who work at the commission can be carried out in its proper function and so that we can come to resolutions a lot quicker than what is the practice today.

Mr Philip: If I look at the history of Dan Hill since he became the Ombudsman of Ontario, and during his tenure, I could point to a number of systemic studies that were fairly concrete and that I think achieved results and some interest. Can you point to any one significant systemic study that has been done by the Ontario Human Rights Commission that historians will talk about in their experience, to date?

Mr Upshaw: There is one under way right now with the Toronto Transit Commission.

Mr Velshi: Mr Upshaw, on page 9 you mention that three middle-management positions and one senior management position were awarded without competition. Who made that decision, to award these positions?

Mr Upshaw: The person responsible for hiring.

Mr Velshi: Is it the commissioner, or somebody lower than that?

Mr Upshaw: It could be the executive director. I cannot point my finger at specifically who made that decision.

Mr Velshi: All right. On the one hand, on page 9 you are saying that these types of positions should not have been awarded, yet on page 13 you are asking for the government to give a greater right to the chief commissioner in the appointment of commissioners. So on the one hand you are saying that they should not have the right to make certain decisions, and on the other page you are saying that they should have a greater right. I am just wondering if they are not contradicting each other.

Mr Upshaw: What we want is the right for the Legislature to confirm the appointment.

Mr Velshi: But still, the names will come from the commissioner.

Mr Upshaw: That is right.

Mr Velshi: So it will still be a choice of names from the commissioner and not from anybody else.

Mr Upshaw: But it will be confirmed by the Legislature, or rejected.

Mr Velshi: Okay, thanks.

The Chairman: Thank you very much, Mr Upshaw.

The next delegation we have is the Ontario Federation of Labour. Take a chair at the front. Perhaps you can introduce yourselves.

As you are aware, we have allowed 30 minutes for your full presentation and questions. I do not know who the spokesperson is, but perhaps you could introduce who is with you.

ONTARIO FEDERATION OF LABOUR

Mr Signoretti: My name is Ken Signoretti. I am the executive vice-president of the Ontario Federation of Labour. I guess, starting on my left, everybody knows who Ross McClellan is.

Mr Breaugh: Who is it? Who is that guy?

Mr McClellan: I am not from Oshawa.

Mr Philip: He is a friend of Dave Barrett's.

Mr Signoretti: I do not want to get into that one.

June Veacock is the director of human rights for the OFL, and Terry O'Connor is an executive board member of the Ontario Federation of Labour. Thank you for allowing us this opportunity to appear.

The Ontario Federation of Labour welcomes the opportunity to appear before this committee to discuss our concerns regarding the functioning of the Ontario Human Rights Commission.

The OFL represents over 800,000 working men and women and their families in Ontario, many of whom are immigrants and visible minorities.

No doubt, you are aware that it was the labour movement that led the struggle for human rights legislation in Ontario. Over the years, the federation has made several submissions to governments regarding revisions to strengthen the code. We have also supported recommendations to increase the budget and resources of the commission. We believe that without adequate resources and efficient processing of complaints, the perception of the commission as useless, which is not far from reality, will prevail.

It would be difficult to find another government organization in the province of Ontario that has been studied and reviewed as often as the commission has. Since Life Together: A Report on Human Rights in Ontario, which was published during 1977, there have been a number of consultant reports, reviews, audits and committee reports. All of these reviews have made recommendations to improve the functioning of the commission, yet the commission continues to be plagued with a backlog of complaints, inadequate staffing, low staff morale and general confusion.

Since 1962, there have been a number of substantial amendments to the code. The current mandate as spelled out in the Human Rights Code, May 1989, prohibits discrimination on a number of grounds. The mandate also permits the commission to initiate complaints on its own, although it seldom does. We believe that the problems of the commission lie not in its mandate but rather in the commission's inability to enforce that mandate.

Race relations division: Provision is made in the code for a race relations division of the commission. Under subsections 27(1) and (2), the structure and functions of the division are spelled out.

On 28 April 1987 the Premier of Ontario, during the speech from the throne, declared, "We will also establish a race relations directorate to promote racial harmony and help to address the needs of racial minorities."

Today, the present status of the race relations directorate vis-à-vis the commission remains unclear.

Over the years the commission has been, and continues to be, plagued with a large backlog of individual complaints. At the end of the fiscal year 1976-77, the commission reported a backlog of over 400 cases. The recent report prepared for the Ministry of Citizenship shows a backlog of over 1,400 cases at the end of March 1989. We believe that the structure of the commission must be revised to allow for the speedy resolution of these complaints. So far, the structure recommended by the 1987 Report on the Operational Review by the Coopers and Lybrand Consulting Group is not fully operational.

Intake: The commission should place a tremendous amount of emphasis at this level, which is the point of entry for complaints. An adequate number of properly trained staff should be provided. Staff at this level should be given the authority to channel complaints expeditiously. They should be able to determine if a complaint should be forwarded directly for investigation or to an officer to determine if any issue of public policy is involved.

Justice delayed is justice denied. The present system lends itself to delays at every step of the process. At the conciliation stage, attempts to resolve cases can take as long as 12 to 18 months. In order to move the process along, measures must be taken, where advisable, to streamline the procedure.

A simple checklist form could replace the questionnaire presently in use. This would allow the complainant to be specific and also to assist the investigator to focus on areas where it appears that a violation of the code has occurred. In addition, this would reduce the possibility of personal bias or oversight that can shift what could very well be a strong case to a weak one during the drafting of a formal complaint.

Where there is an element of doubt and an investigation is necessary, a time frame should be established for the investigating officer to submit a status report on the findings of the case.

The commission should establish clear guidelines for investigating officers.

Respondents and their representatives often create unnecessary delays in order to frustrate complainants. Indeed, investigators are also subjected to this tactic. They too have expressed frustration and are demoralized when dealing with recalcitrant respondents and their agents.

The code allows for entry warrants and warrants for search under subsections 31(5) and 31(6). Where it is evident that respondents are withholding information and obstructing the investigation, the commission should rely on the investigating officer of these cases to intervene as empowered under the above sections.

Boards of inquiry: Timely resolution of complaints is so important to the preservation of our democratic society that complainants should not be held to ransom by the timetable of part-time boards. It is intolerable that victims of discrimination must wait for a decision for as long as four years after the initial filing of a complaint. One way might be to establish a permanent board of inquiry in order to eliminate or minimize the delays. Alternatively, when a board of inquiry is recommended, a time frame should be established after the initial hearing for the board to sit and render its decision.

Systemic discrimination: It is obvious that a case-by-case approach to discrimination has not worked, simply because the complaint-triggered mechanism, while providing data, is not eliminating discrimination. Further, an act of discrimination is not against an individual per se; it is against the individual as a member of a group stereotyped by society. Institutional barriers in employment continue to shut out groups of people thereby limiting their potential for development. The commission must now move to identify and remedy systemic discrimination.

The importance of eliminating institutional barriers cannot be overstressed. The commission's own hiring practices, which have resulted in the entire senior management and staff of the commission being white, highlight the need for employment equity programs, even at the commission level. Although it is indeed a sad reflection that any agency charged with the responsibility of upholding the dignity and the rights of the individual cannot be trusted to hire on the basis of merit.

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Enforcement of the code: Critical to the success of any new mandate and structure is the enforcement of the code. Delays will continue and the commission will retain its reputation of ineffectiveness if the code is not vigorously enforced. Therefore, strict enforcement must be a fundamental thrust of the commission.

Resources: The commission must be given resources to enforce the code and participate fully in issues of public policy in keeping with the reality of a multicultural Ontario. It is not enough for governments to proclaim piously their desire for and their vision of equality, to further reflect that vision in legislation and then withhold the necessary resources to realize that vision. Human rights laws are nothing but ink on paper unless they can be monitored, investigated, enforced and protected.

The Chairman: We have approximately six minutes for each party.

Mr. Curling: Thank you for the presentation. I found it of interest. As a matter of fact, it is quite consistent with some of the things I have been hearing today.

On your page 7—it just jumped out at me and maybe it needs a bit more explanation on this—it said it would be "a sad reflection that an agency charged with the responsibility of upholding the dignity and rights of the individual cannot be trusted to hire on the basis of merit."

Is your suggestion there that basically those who have gotten the jobs, those seven, were completely based on merit and there is no justification for the concern that no blacks or any other visible minorities were hired in those positions?

Mr Signoretti: First you must look at it in terms of their all being white, as I understand, who were hired. I guess in the community out there there is a perception at times, and when the perception is that there are all whites hired, then one would look at it and say, "They're not doing the right thing."

I do not know how you get around it. Maybe there was merit, maybe they did it on the merit basis. But I am saying to you that if there is a merit basis and, say, you have seven whites or you have five whites and three blacks, even if the merit is equal, or close to being equal, then I think you have to look at hiring minorities because it then gives a perception to the people out there that the commission is doing something about it.

Do you want to add something to that?

Ms Veacock: Yes. The report prepared for the Ministry of Citizenship, particularly with respect to the position of director of finance, clearly stated that several members of highly qualified visible minorities were not interviewed and in fact went on to state clearly that the applicant selected was not as qualified as one visible minority applicant. Surely if that position had been filled on the basis of merit, then it would not have been a white candidate selected.

Mr Philip: Thank you for an interesting brief, and you certainly dealt with one of the major complaints we have had about the "justice delayed is justice denied" problem. I want to ask you a different question, though, and that is about the whole problem of discrimination against groups of people, be it pornography that stereotypes women or other forms of stereotyping of groups of individuals. I am wondering if you feel that there should be any changes to this Human Rights Code to allow for action where groups are labelled rather than simply individual complaints of discrimination.

Mr Signoretti: Yes, we agree with that.

Ms Veacock: As the brief said, a case-by-case approach to discrimination is not working, and the Coopers and Lybrand report which was prepared for the commission back in 1987 was very detailed in its recommendation regarding a systemic unit for the commission.

Mr Philip: You feel then that groups should be able to take action as groups, not just as individual complainants.

Ms Veacock: Not to the exclusion of the individual complaint.

Mr Philip: And third parties could take action. Indeed, as you have pointed out, under the present act the human rights commissioner can take action on his or her own initiative.

Mr McClellan: I would stress, if I can, the point that was made about the failure of the commission to enforce the code case by case. You pointed out that the backlog 12 years ago was 400 cases; it is now 1,400 cases. So before you start talking about the mandate, or simultaneously as you are talking about changing the mandate to assume new responsibilities, please provide the commission with the resources to do its job.

Mrs Marland: You are talking in particular about the cases that are identified in the Amin-Gordon report, the interministerial report, and you mentioned, Ms Veacock, that if the most eligible person with the most

experience had been hired, that person would in fact have been from a visible minority. If that person continues in the employment of the Ontario Human Rights Commission—and I am not sure whether that person is, in that particular case that you are citing—what can we do to protect the rights of those people who are employees of the very commission whose mandate is to ensure that those kinds of hiring practices do not in fact take place in any other agency in this province, whether public or private sector employment?

Ms Veacock: I think the OPSEU now has on the bargaining table a no-discrimination clause. My understanding is that the commission so far has rejected that proposal. That might be one way.

Mr Breaugh: The human rights commission has rejected a clause against discrimination? I can understand why the government would, but the human rights commission is, theoretically, out there to fight discrimination.

Ms Veacock: You would think so.

Mr Breaugh: Good God, are there not any brains left anywhere in the civil service?

Mr Philip: So what is your next recourse, to get to the Ombudsman for a review of the decision? Where do you go from here?

Mr McClellan: Go back to the bargaining table and hope that sanity will prevail.

Mr Philip: That may be an even slower process than the one you are talking about.

Mrs Marland: This is such a grave matter, and this is why this matter is before this committee and why it is important that the Liberal government not shut down these hearings and restrict those people who should be heard at this committee.

Later this afternoon, I am going to place a motion requesting that former employees be invited to come before this hearing, because the very area that you have identified is what is so unjust. It is fine if we are talking about people who are fortunate enough to belong to unions; maybe through the bargaining process people who belong to unions do have a chance. But there are thousands upon thousands of people who work in this province who do not belong to a union. Who is going to bargain on their behalf for their human rights, especially if they happen to fall into the employment of that agency, the Ontario Human Rights Commission, where there is malpractice in the province in terms of minority rights or human rights?

How do you feel about those people? Obviously as the Ontario Federation of Labour, I know your concern is very broadly based, but how do you feel about the future of that possibility for those people whose rights are not recognized or represented at the bargaining table?

Ms Veacock: I think that speaks for the need for employment equity legislation, with mandatory enforcement, goals and timetables. I think it speaks to that.

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Mrs Marland: Do you think that the current Liberal government should

be forced at least to recognize in legislation the mandate of the Ontario Human Rights Commission to deal with the current systemic problems within its own organization?

Ms Veacock: Absolutely.

Mr Velshi: When you spoke, Mr McClellan, about the backlog, which has gone from a few hundred to 1,400 now, I just chuckled a bit with that and I realize why that is so. It is almost like Mr Gorbachev now talking about perestroika and suddenly the people feel there is something for them. Suddenly Mr Gorbachev has come on the scene and given them something that they have never had before, and I tend to think of the Liberal Party as the same thing. The visible minorities never felt they had any access to anything in this province. Suddenly they have got it and they are coming forward now and that is why we see a big backlog. And I for one feel very strongly that way. I wonder if you feel the same.

Mr McClellan: Well, if services increase, then the resources have to increase to keep pace with the demand. If what was defined as a crisis back in the 1976-77 Life Together report—and it was described as a crisis, with 400 cases backlogged—what do you call it now with 1,400? That is the question that I raise. I understand the point you are making about increased understanding and expectations, but the resources have not kept pace with the demand for service, and that is something that this committee has to address.

Mr O'Connor: Could I add something in reply to that? Rather than a lot of people now coming forward to bring forward complaints because they think complaints are being heard, because of the backlog and the lack of the possibility of complaints being heard, people are not coming forward with complaints. In fact, the opposite is taking place, from what you are—

Mr Velshi: Yes, I realize that. It is a cycle that we are going to have to break.

Mrs Marland: In the presentation before yours, OPSEU said that the former commissioner had agreed to establish the committee that would protect at least its own employees, and you have now said that committee does not exist, it has not been established.

Ms Veacock: No, I do not think that was what we said.

Mrs Marland: No, no. You did not say that. What I am asking is, since a committee to resolve the problems at least at the Ontario Human Rights Commission—which must be a model, obviously the Ontario Human Rights Commission must be a model for human rights in this province. Obviously where it is not model, where it does not have the best management practices and employment practices as we heard yesterday from Mr Amin and Mr Gordon, where that does not exist and the commission itself refuses to implement a committee that might be the beginning of a resolution, have you any suggestions about how we can remedy that situation?

Ms Veacock: As my colleague said, I think the commission should be sitting down with the representatives of the workers in that agency. My understanding is that there is now an employment equity document, and I do not know to what extent the union has been involved, if at all, in the development of the document. I think you must have union participation in order for any document that speaks to employment equity for it to be effective.

Mrs Marland: I have a motion.

The Chairman: Thank you for appearing before us today. We much appreciate it. Committee, we have our next presenters at 3:30. However, if they want to deal with that, it is up to the committee. Zoltan, who was on the agenda yesterday but was not confirmed, has dropped in today and would like to make a few minutes' presentation. We can deal with that now and we can deal with what Mrs Marland wants to deal with later. It is up to the committee. Which would you like to have dealt with first?

Mrs Roberts: Zoltan is here. I believe 15 minutes is the appropriate period of time of time for an individual.

The Chairman: That is the maximum, yes.

Would you like to present yourself up to the table at the front. You have a maximum of 15 minutes, which will allow you time to make a presentation and give us some time for questions, if you prefer. The maximum time is 15 minutes. You may proceed.

ZOLTAN SZOBOSZLOI

Mr Szoboszloi: My name is Zoltan Szoboszloi. I was born in Budapest in 1915, 23 January. In 1936, I finished the gymnasium and afterwards I went to law school. I studied constitutional law in 1936, 53 years ago. I fled in 1945 from Budapest, Transylvania, Romania, Bulgaria, Greece, Turkey, Crete, Sicily, Calabria to Switzerland. I was living in Switzerland three years, where I again studied law from 22 September 1947 to 22 September 1948, in jail, in solitary confinement. After I was expelled, I went to France and I studied law and criminology at Université de Paris.

After, the international refugee organization and the Canadian immigration authorities, through miscarriage of justice, imported me to the English colony, Canada. Since this time, in 1951, I went to the University of Montreal. After I went down to Windsor, I had no money to continue my studies. I went down to Windsor and I was working as tool and machine repair man for Ford and Chrysler. I never saw in my life so dirty and infamous criminal conspiracy as is going on in this colony.

In 1956, through industrial injury, they cut off my arm, and I wanted to lay a criminal charge for criminal negligence against the company. They said I could not lay a criminal negligence charge against the company because the Workers' Compensation Board pays me. I said, "No, what the compensation board pay me for, that is the civil collective responsibility, and the industry should be responsible for criminal negligence committed against the worker." This is in the Criminal Code of English colony Canada.

I consider it a dirty crime to consider Canada as a country. Right now in this colony they have a Governor General, Jeanne Sauvé, to promote the interests of the British Empire. I am asking your attention, here on the bottom, in the new constipation. I call it "constipation." Canadians usually call it "Constitution." This was never a law. Originally it was an act. The act is a three-times-read bill in Parliament.

I am asking this honourable committee to make a mandate to God, because God is a dirty criminal, because the God save the Queen, and the Queen brought home the constipation to Canada where the Constitution was never before—the British-North America Act—and the Queen put on the bottom, "God save the

Queen." Now I put on my business card "God save everyone from the Queen." God is a dirty criminal if God save the Queen and cannot be part of the Constitution. This is nonsense. This is a criminal conspiracy of these people who are living in this Parliament, who are sitting in this federal Parliament, at the same time. Then Jeanne Sauvé is representing the British Empire.

At the same time, in English colony Ontario we have a governor of the white, Anglo-Saxon Protestants. I suggest to the court, I have no discrimination against colour or Jew or somebody, but we should send a mirror to Lincoln Alexander to look at himself, that he is not a white, Anglo-Saxon Protestant, and if he promotes the interests of the British Empire, he should get a necklace. Many of my coloured friends said, "Zoltan, if we will be a republic, I volunteer to put the necklace on Lincoln Alexander." No.

I suggest to this committee, first of all, make a mandate to God that God should never save the Queen, that God should save the people from the Queen.

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Second thing, the Queen never born with head. Allegedly, the Queen born with the figurehead, even she born by cesarean cut and she came out with feet. At first, they thought, "Oh, the Queen will have no head." But after, they attached the one head.

And the Queen did admit her dirty crime. She kept the banana act in the British Parliament, in Buckingham Palace.

In 1968 was the constitutional debate in Parliament. And I suggested to Mr Bennett, Wacky Bennett from British Columbia, and Pierre Elizabeth Trudeau—I call him "Elizabeth" Trudeau because he made a homosexual law for English colony Canada—"Your constitution and your Queen is junk."

Pierre Trudeau ordered my arrest. I sued Pierre Trudeau in 1968, but I have to mention, in 1966, I lectured at the law school at the University of Toronto. In 1970, I did lecture as an invited lecturer at the University of Windsor. In 1976, I lectured as invited lecturer of political science by Professor Ellis at McMaster University. In 1979, I lectured at Osgoode Hall Law School and I suggested, "This is a dirty crime to call Canada a country."

The banana act is in the British Parliament, and the Canadian Constitution said that whereas the provinces of Canada—Nova Scotia, New Brunswick—have expressed their desire to be federally united in one dominion under the crown of the United Kingdom, no more Great Britain and England, with a constitution similar to the principle of that of the United Kingdom—my submission is that I did study law in Hungary and we learned that the United Kingdom is a dirty bunch of criminals. In the Second World War, Churchill, Roosevelt and Stalin were murder partners together at Potsdam, Tehran and Yalta.

To the Queen and God to the court, I requested the Canada citizenship paper without swearing allegiance to the Queen. I said, "Hey, I am willing to swear allegiance to the Canadian potato, tomato, but not the English Queen, the dead Queen."

They force yet even the politicians—you gentlemen did swear allegiance to the carcass of Queen Victoria, operating over the fifth schedule of the new constipation. This is shocking, please. You should read, and I suggest to you

your secretary should make a research, how come we have to swear allegiance to the carcass of Queen Victoria?

During the Second World War, the Nazis, they do allegiance to Hitler, the communists to Stalin, the Fascists to Mussolini, but all treat as criminal the humanity, where in life they were fighting for human dignity. But they were never sleeping with carcass, like the Canadian politician.

They are what they call in psychology and psychiatry paranoid. They dug out the carcass, made intercourse, and held a world war in the north of France in the 1600s—dug out the carcass, made intercourse and they chewed them. This is shocking, please.

I am asking you, get a copy of the Constitution, of the banana act, and study this, and then make the mandate to God, and besides that, cast completely the Constitution. The Queen is dead; there is no connection any more with England.

But at the same time, the poor, stupid Canadian people, brainwashed Canadian people, are fighting the acid rain. But the problem in this colony is not the acid rain; in my respectful submission to all you gentlemen, the acid brain, with "B."

I am asking you respectfully, check this one. Invite me any time to any debate. I go clean, contrary to the fact I was in the jail at least 20 times in Toronto. I refused to pay \$2 because the Queen charged me. I should pay her \$2 because where I was sleeping, I parked my car. I committed a crime against the Queen.

She is a rotten criminal if she accuses me of committing a crime against the Queen for parking my car and going to sleep. My mother told me when I was a little boy: "Sonny, go to sleep. You are the best boy when you are sleeping," and nobody can say I committed a crime in which one should be what they called a "mens rea" against the Queen.

That is my submission. I do not want to waste your time. I am open to debate any time. I would appreciate it very much.

Furthermore, when I requested the Canada citizenship papers in Ottawa, I told the Justice officer, "I do not swear allegiance to the Queen." Because first of all, I am a woman-hater. I like only the ladies and I am a bachelor, and now I have reached 75 years of age. I am a bachelor yet and I did find all these nice ladies who will wash my back without allegiance. Why should I swear allegiance to the rotten English Queen and to the carcass of Queen Victoria according to the new "constipation"? Gentlemen, I suggest to you, you should withdraw your oath of allegiance to the carcass of Queen Victoria and make a human rights commission without the Queen, without the carcass of Queen Victoria.

The Chairman: Thank you. You have used up your—

Mr Szoboszloi: I am too much for England; I do not talk dirty. My submission is how it is on my business card: "God fog the Queen," f-o-g.

The Chairman: Thank you. You have used up your allotted time.

Mr Szoboszloi: Any questions, gentlemen?

The Chairman: Thank you.

Mr Szoboszloi: I think you got all the information.

The Chairman: That is your allotted time. Our next delegate is Paul Fromm. Perhaps you could give us some background on your association.

Mrs Marland: Mr Chairman, can I just be clear about what we are doing? We are going to start Mr Fromm 15 minutes early, is that right?

The Chairman: That is right. He has half an hour.

Mrs Marland: And then will you accept my motion?

The Chairman: Yes.

Mrs Marland: Thank you.

The Chairman: Mr Fromm, 30 minutes.

CANADIAN ASSOCIATION FOR FREE EXPRESSION

Mr Fromm: Thank you very much. I think there is a slight discrepancy between the name on the submission I have given you and on the agenda. I would like to clarify that. I am put down here as speaking on behalf of Citizens for Foreign Aid Reform—that is on your agenda—but in fact I am speaking on behalf of the Canadian Association for Free Expression. I think the reason for confusion is that at our end, we have the same office manager handling the affairs of both groups, and I think the right person but the wrong group got registered.

I would like to give just a very little bit of background on the Canadian Association for Free Expression. We are an incorporated group in the provinces of Ontario and Alberta and we have been in existence since 1980. We publish a quarterly newsletter and occasional supplements, and reach about 2,500 Canadians from coast to coast.

In the masthead of our CAFE quarterly we indicate that we believe that one of the prime threats to freedom of expression in this country of ours is human rights commissions. I would like to give you a little bit of background on that, because as I understand the rather broad mandate of this committee, you are looking into the present and future operations and mandate of the Ontario Human Rights Commission, and there are some areas that concern our group, particularly in terms of freedom of speech. The Ontario Human Rights Commission, for over the past decade, has had a sorry record of attacking one of the most fundamental liberties in our country: that is, freedom of speech and expression.

I sit here in front of you as one of the victims of the Ontario Human Rights Commission. I know it is not just advanced paranoia. I think we have evidence here that there are a good many other victims who have put their testimony on the public record. It seems somewhat contradictory that we would have a human rights commission that does not take into account one of the rights that is absolutely guaranteed and enshrined in that very beautiful document the Canadian Charter of Rights and Freedoms, and that is freedom of speech—freedom of expression and freedom of the press. Yet the Ontario Human Rights Commission, going back for at least 12 years, has had a practice of assailing people who write in the press whose views may not jibe with those of

the Ontario Human Rights Commission.

I will start first with my own story, which is of course the one I am most familiar with. Among other things, I have done freelance writing for nearly 20 years and I have authored a number of books. Back in the mid-1970s I was contributing book reviews to the Financial Post. Some of the books were submitted to me for review. Others were topics or titles I dug up on my own and thought ought to be reviewed.

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In October 1975—that is appendix 1—I published a review of a book called Bended Elbow by a woman named Eleanor Jacobson up in Kenora. This was book that was quite critical of some of the activities of the native people and also quite critical of the government policies vis-à-vis Indians in northern Ontario. It was written from the point of view of one of the white people in the community.

I would not say it was a particularly great book; it was not. It was produced by a small publisher. It was rough around the edges, as, I suspect, was the author. My review, as you can see there, was pretty much down the middle, trying to summarize the gist of what was in the book, indicating some praise and also indicating some criticism. It was by no means a flack job for the book.

The review was obviously acceptable to my editor at the Financial Post and I thought no more of it and went on to prepare reviews on several other books. I would probably not have known any of this story except for the fact that I had a friend working at the Financial Post. He called me one evening shortly after this and said that the book review editor had been paid a visit by a member of the Ontario Human Rights Commission complaining bitterly, first of all, that that book had been reviewed. He was told that that book should never have seen the light of day and certainly should not have been reviewed, and second, complained about yours truly, whom he identified as a right-winger, and he had a dossier with him.

I suppose from an intelligence point of view, the dossier was somewhat laughable. Out of the file folder—this weighty dossier—were taken a couple of pieces of paper which were photocopies of letters to the editor that I had written over the years, including several that were critical of the human rights commission. That was the dossier.

While this may seem somewhat laughable as a way to pressure the press, it is sinister. Here I am, a taxpayer in this province, paying taxes out of one pocket and supporting, in part, the Ontario Human Rights Commission, whose operatives are going around attempting to prevent me from putting money into that pocket; in other words, attempting to curtail my opportunity for employment. This has a chilling effect.

As I understand it, the visit from the person from the Ontario Human Rights Commission did not particularly faze the book review editor. This visit, as I am informed, was followed by another visit by the then director of the Ontario Human Rights Commission, Dr T. H. Symons, and he visited the then publisher of the Financial Post. What representations he made we do not know. But the visit did occur and thereafter I was not publishing any more book reviews in the Financial Post. This is not a complaint against the Post, because from time to time subsequently I have submitted articles that have been accepted but not in a book review capacity.

The point of this story is not whether I subsequently was able to write for the Financial Post, the point is that this type of representation was made by a public servant of a body that has as its title human rights. Certainly one of the human rights in this country is freedom of expression. It seems to me appalling that that type of behaviour should exist.

My story was written up, in brief, in Barbara Amiel's book, Confessions. The relevant pages are there for you to see. As I said, I would not want this to appear to be an entirely idiosyncratic complaint that I have been done wrong. I think I was unfairly treated, but I am glad to say I am not the only person.

In Barbara Amiel's book, Confessions, there is an entire chapter dealing with her quarrels with the Ontario Human Rights Commission and other human rights commissions. Strong pressure was brought to bear on Peter C. Newman, who was then her editor at Maclean's. The pressure, as in my case, began with informal little chats and then escalated to a paper exchange of vehement denunciations against Amiel for some of the articles she had written on supposedly racially sensitive topics.

Again, in that case, because I think Peter Newman has a great deal of respect for the freedom and the independence of the press, Barbara Amiel continued to write. Again, in this case, she was made aware that pressure was being brought to bear. We suspect there are many cases where the Ontario Human Rights Commission has had one of its quiet little chats with an editor and somebody's writing career has been curtailed. This procedure has only come to light in cases where, in my situation, there was a friend to tell me about it, or in the case of Barbara Amiel a sympathetic editor to tell her about it. I think this type of behaviour on the part of the Ontario Human Rights Commission is absolutely outrageous.

While we are just talking about past history from the 1970s—excuse me, I would like to go back to one part of my story that I think I left out. When I became aware that Dr Symons had contacted the publisher of the Financial Post, I phoned him up in Peterborough and I was given an absolutely chilling reception. He did not deny that he had done this, and when I complained that this was rather trampling all over my civil rights, he simply indicated to me that he was in charge and that if I did not mind my Ps and Qs, this type of thing would happen again, just basically: "Let this be a lesson to you. You've crossed important people." I might say I did not particularly take that lesson to heart, but I thought it was an outrageous way for a human rights commission to proceed.

As I said, this is not entirely past history. In 1980, then Ontario Human Rights Commission chairman Dorothea Crittenden wrote to the president of the University of Toronto, urging him to ban the university's engineering paper, the Toike Oike, for alleged sexist and racist material. As recently as this February, another University of Toronto Student, Darryl McDowell, found himself the subject of an investigation by the Ontario Human Rights Commission because of something he had written in one of the college newspapers. Again, this is a matter of freedom of expression, certainly not a matter for the Ontario Human Rights Commission to look into.

Another aspect of the human rights commission's outrageous violation of freedom of expression is a draft document that came out in the summer of 1988, called the Draft Guidelines on Racial Harassment Provisions of the Ontario Human Rights Code. This came in for some press criticism, including criticism from Peter Brimelow, who writes for the Financial Post. He commented:

"These proposed guidelines place immense power in the hands of 'individuals'—assuming they are of a type the Ontario Human Rights Commission is inclined to favour. Any disgruntled employee will be able to inflict huge cost on his employer and fellow workers by bringing charges of a peculiarly subjective, and, hence, irrefutable kind. And this power can be extended a long way. OHRC says that any 'racial remarks, jokes or innuendoes' in the workplace and the displaying of 'racist, derogatory or offensive pictures or materials' can 'poison the environment' and hence be a code violation. But the definition of 'offensive' is...up to the complainant—and OHRC."

We submitted a brief to the Ontario Human Rights Commission last September, I believe, and the brief dealt with these guidelines. The brief is there for you to read, I will not go through it all, but if you are not aware of these guidelines, I really urge you to take 10 minutes tonight or tomorrow and read them.

You will at first wonder whether you are not reading something out of a satire, out of the National Lampoon, trying to get across what rules are like in a totalitarian state. When we were preparing this brief regarding these guidelines, one of our members said, "After reading this over, I was almost wondering whether perhaps somebody had sent this to us a joke, that this is not really a government document." It reads like the type of a law you would have in a totalitarian state like Zimbabwe, where there is a law on the books making it an offence punishable by two years in jail to joke about the president's name. The president was Canaan Banana, and since it is an English-speaking country, I suppose there were people who made jokes about such things.

I will not go through the entirety of that brief. I do suggest that there are some valuable things in it, but I would just like to touch on a couple of the points.

One of the problems is that racial harassment as defined in these guidelines is entirely subjective. It is really any action, word, even picture in the workplace that somebody chooses to find offensive. This certainly is a wild departure from traditional British justice, where the law is clearly stated. A reasonable person can know what is an offence and what is not an offence and therefore can govern himself accordingly. It is a further departure from traditional British justice in that it is entirely subjective. Offences are whatever some visible minority chooses to find offensive.

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For instance, the guidelines say,

"Conduct or comments which are racially motivated and which may not, on their face, be considered offensive on an objective basis, may still be 'unwelcome.'...If the individual indicates that this is the case, then a repetition of a similar type of activity will, in most instances, constitute a violation of the code."

So it is not even just a racial comment. It could be a course of activity which is racially motivated.

How does one know what is racially motivated? Could it be, for instance, that if an employee is by nature fairly brusque and abrupt with everybody but, say, his or her one pal, some member of a visible minority might interpret that brusque or abrupt behaviour as being racially motivated, even though the

brusque or abrupt behaviour in no way involves racial comments or anything along that line?

As the guidelines are stated, employees and employers are not only slaves to the whims and interpretations of minority complainants in conduct directed toward these people, but they find themselves denied their right even to private expression of their views. Also prohibited in the guidelines are "racial remarks, jokes or innuendoes"—five minutes out for joking—"made about other racial groups in the presence of an employee or tenant," even if no member of a minority is present. So if A, who is white, tells B, who is white, a joke that might be considered racially motivated or sexually motivated and employee C, who is also white, hears about it and is a professional busybody, employee C may go off and complain that employee C is offended and both the business and the joke-telling employees are in trouble.

Again, we suggest that the definitions are pretty fuzzy. What is a racial remark? If an employee were talking to another employee complaining that illegal immigrants are making a joke of our immigration laws, could that be considered a racial remark? If it is, the June 1987 Gallup poll suggests that 77.6 per cent of Canadians are racist in their views. The prohibition on jokes and comments on racial matters is an outrageous infringement of freedom of speech.

Also prohibited in the guidelines is "the displaying of racist, derogatory or offensive pictures or material." Again, the terms "derogatory" and "offensive" are entirely subjective, never defined.

Back in August 1988, the Toronto Star published a photograph of Muslims in Pakistan, I believe, flagellating themselves. If some employee had clipped this out and stuck it up in his locker, say, at work and stuck over it a further sign saying, "Religious fanaticism at work," would that be an offensive sign? I do not know. The policy does not tell us, but certainly if that were considered offensive, that would be denying his freedom of expression. Could a fervent Irish Republican, for instance, not object that a picture of the Queen is offensive to him?

These guidelines are really totalitarian. In the submission we made to the Ontario Human Rights Commission at that time, which of course was never acknowledged, we really wonder whether the people who drafted it were from another planet, whether these people in fact were even aware that we have a Charter of Rights and Freedoms. At least in theory, this is not a totalitarian state.

Keeping all this in mind, therefore, we recommend that the Ontario Human Rights Commission be forbidden to keep files on Canadians because of their political views; second, that the Ontario Human Rights Commission be specifically prohibited from making any representations to editors or publishers beyond letters to the editor in criticism of articles or authors; third, that an independent investigator be appointed to determine the extent of the Ontario Human Rights Commission's attempt to pressure the media with a view to awarding compensation to journalists so victimized; and fourth, that the draft guidelines on racial harassment be withdrawn and reworked to take cognizance of the protections of freedom of speech guaranteed in our Charter of Rights and Freedoms.

I am sure people who are enamoured of the Ontario Human Rights Commission will not be happy with this criticism, but it is certainly one made by a number of journalists: The Ontario Human Rights Commission is essentially a make-work project for meddlers.

The fact is, when it was set up nearly 25 years ago, there was no doubt certain discrimination on the basis of race and religion, not only in private business, but also in the public sector. It was not that many decades ago that you could not get a job in the municipal government in Toronto if you were not a member of the Orange Lodge.

I would also suggest that those days have changed. Society has changed and for the most part that type of discrimination, particularly in larger enterprises and in government, has been eliminated. One would therefore think that the Ontario Human Rights Commission would be winding down its activities. After all, the initial goals of fighting discrimination in employment have been largely realized.

But, of course, that is not the nature of bureaucracies. It is only human nature to try to hang on to what you have got and, if possible, to expand it. I am sure I need not tell you, as members of the Legislature who I assume are keeping a sharp eye over bureaucracy, that it is in the nature of bureaucrats to want to expand whatever empire they have.

What we have seen over the last few years is an ever-expanding alleged need. The battles have not been won; why, the war has hardly even begun because ever newer and more arcane forms of discrimination are invented. Now it is no longer just people who say, "I will not hire you because you are a Catholic." Now there is something called systemic discrimination. We will not win that war, we are told, until every workplace absolutely, exactly mirrors the general population. It will indeed be amusing to see what happens to Chinese restaurants. They might need a cook, but they already have too many Chinese people there, so they will end up putting up a notice that what they are looking for is a gay, female, crippled native person to fill the job as cook to keep themselves within quota. That is the direction we are headed.

And so the human rights commission invents ever newer tasks, ever greater battles that must be fought to justify what, under the present government, has been certainly a very handsome increase in its budget. Certainly fighting the human rights war is well-paying work. I understand the chief commissioner had \$90,000 a year. He is still in his early 30s. Not a bad job for waging holy war, not a bad job at all.

One of the most blatant examples of this sort of make-work, which also ends up violating human rights all over the place, is the most recent effort by the Ontario Human Rights Commission, through its lawyers, to bring an action in the Ontario Court of Appeal to strike down 65-year-old scholarship funds created by the late Colonel Reuben Leonard. This fund provides over \$175,000 annually in university scholarships. The late Colonel Leonard willed this money to people who are white Protestants of British ancestry.

This, for some reason, has the human rights commission in a great uproar. Of course it is discriminatory, but then any will is discriminatory. Even if you leave all your money to your own family, it is discriminating against the family next door. Some win, some do not; your family wins, the next door neighbours do not. Perhaps a more accurate comparison might be a person who wills most of his or her money to the local Jewish hospital. That is discriminatory. Why does it not go to St Mike's or to a Catholic private boys' school? That is discriminatory. Why does it not go to a Protestant boys' school or girls' school—doubly discriminatory—or to an ethnic club?

Is the human rights commission going to get into the job of being the final probate authority on wills, determining what is discriminatory and what

is not? Should they win this particular lawsuit, they will have themselves a make-work project for ever and ever. Surely, I think, it becomes obvious that the human rights commission has meddled in areas that are way, way beyond its original mandate, and the more it meddles in those areas, the more it tends to trample on other people's rights.

It is our final recommendations, in a general way, that the budget of the Ontario Human Rights Commission, instead of being expanded, should be reduced in half. We feel that it should only be empowered to investigate complaints of racial, sexual or ethnic discrimination in the public service and in major corporations, being defined as corporations of over 500 employees, and finally, that adequate safeguards be provided so that businesses are not victimized by frivolous or malicious complaints.

In our circle, the Ontario Human Rights Commission is not called that; it is called the "minorities rights commission" because there are two classes of citizens. Had I been a visible minority, I would have had a field day with the Financial Post. Proven or not, I could say I am being discriminated against because I am whatever minority. As a person who is white, I do not have that option.

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I think there have to be strong safeguards built in so that businesses are not unfairly harassed by people who may simply be disgruntled employees or former employees wishing to get back for being fired for reasons entirely separate from their race or ethnicity. This is a very serious subject and we take it very seriously. We take the attacks on freedom of expression extremely seriously, but I would not like to leave you with the impression that our view is entirely gloom and doom.

I think our approach to this and our contempt for totalitarian bureaucrats is very well summed up in a little cartoon which is on the second last page of my presentation. It is actually borrowed from the cover of a book of cartoons and jokes that was translated from Soviet humour about a decade ago. The cover has, I guess, politburo types gazing out over a square, and it says, "Look Comrade---the people are laughing." And one of them realizes, "They're laughing at us."

The Chairman: What would you say if the question came up with regard to private individuals who get frivolous or malicious complaints? You are talking here about companies only. What about a frivolous complaint against a private individual? Is that not as important as complaints against a company?

Mr Fromm: Yes, I see what you mean, absolutely. You are talking, for instance, about a small landlord?

The Chairman: Yes, or a private individual.

Mr Fromm: Absolutely. I think that the regulations should be rewritten in such a way that there is a severe penalty for making frivolous or malicious complaints, whether it is against a corporation, government or an individual.

The Chairman: Would I be correct in saying that there is nothing in the act that protects any individual from that?

Mr Fromm: Not in our reading of it, no.

Mr Velshi: I have comments rather than questions. After hearing Mr Fromm, I do not think free speech is in any danger at all. Also, Zimbabwe is not a dictatorship. I think, for the record, I have to put down that Zimbabwe is a democracy.

Mr Fromm: With one party.

Mr Velshi: That is fine, that does not matter. It is a democracy.

I am also glad that Mr Fromm has accepted the fact that companies of over 500 people working can have problems with sexual and racial harassment. I think the problem between Mr Fromm and me is only in terms of degree. What about companies that are under 500? I think they could have the same problems, I suspect they would have the same problems. So Mr Fromm and I are not at variance in what we are saying. It is just that he feels we should stop at 500 people and I feel we should stop at one. That is the only difference.

The Chairman: There being no further questions, I want to thank you for attending today. It was an excellent presentation.

Okay committee, that completes the presentations for today.

Mrs Marland: I have a motion which I would like to serve to the committee as a notice of motion. If the clerk could circulate it, I will just read it into the record.

Given the serious allegations made by employees and former employees against the Ontario Human Rights Commission, and given that maintenance of public confidence in the integrity of the commission is a matter of vital concern to the Legislature and all people in Ontario, I move that the following former and current officers of the Ontario Human Rights Commission be asked to appear before the standing committee on government agencies: Mike Gage, former executive director; Anne Molloy, former director of legal services, and Tanja Wacyk, director of policy and research, and that the committee accept the request of James Stratton, former director of compliance with the Ontario Human Rights Commission, to testify before this committee.

The Chairman: Thank you. You have heard the motion. Is there any discussion on the motion?

Mrs Marland: I am serving this as a notice of motion, and the reason I am doing that is that I am cognizant of the fact that we have agreed to have yet another subcommittee meeting to look at names of other people the committee will agree to invite to the hearings.

Mr Breaugh: I have no problem with the notion of presenting it as a notice today. I think we are struggling with the notion of who else might be called as a witness, if anyone. From my point of view, I would prefer to go through this week's hearings to see if there are other names that emerge or an argument to be made to continue the hearings in some form, and if so, what that form might be.

I think it would be useful to take it as notice and to allow the members of the committee to have the remainder of this week's hearings to consider this motion, any other folks you might want to call and what will be the nature of the rest of the deliberations of this particular committee. As a notice, I think that is just fine.

Mr J. B. Nixon: It seems pretty clear to me that Mrs Marland will do what she wants to do, and if she intends this to be a notice of motion, it will be a notice of motion.

My only question is a procedural question. Does this mean we are having the subcommittee meeting on Friday---when will we have it---or does this supersede the subcommittee meeting?

The Chairman: I would suggest we have the subcommittee meeting as soon as we adjourn now.

Mr J. B. Nixon: Okay. Fair enough.

The Chairman: No further discussion? This committee is adjourned until 10 am tomorrow morning.

The committee adjourned at 1547.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

ONTARIO HUMAN RIGHTS COMMISSION

THURSDAY 5 OCTOBER 1989

Morning Sitting



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VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Curling, Alvin (Scarborough North L) for Mr South

Kanter, Ron (St. Andrew-St. Patrick L) for Mr Ballinger

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Farnan

Smith, E. Joan (London South L) for Mr Miller

Clerk: Brown, Harold

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

McGarva, Bernard, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the National Federation of Pakistani Canadians:

Alam, Mubarka, General Secretary

From the Joint Community Relations Committee, Canadian Jewish Congress,
Ontario Region:

Satok, David, Chairman

Farber, Bernie M., Director of Research

From the Organization of South Asian Canadians:

Nambiar, Bala, Vice-President

Dharmalingam, A., President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday 5 October 1989

The committee met at 1000 in room 151.

ONTARIO HUMAN RIGHTS COMMISSION
(continued)

The Chairman: I call the standing committee on government agencies to order to continue our deliberations on the Ontario Human Rights Commission. This morning we have with us the National Federation of Pakistani Canadians. Mrs Alam, if you would like to take a seat up at the front, you have 30 minutes to make a presentation and you may use all of it whichever way you like, and leave some for questions if you so desire. You may proceed.

NATIONAL FEDERATION OF PAKISTANI CANADIANS

Mrs Alam: This presentation is being made on behalf of the National Federation of Pakistani Canadians and other people of Pakistani origin living in Ontario. Other Muslims of south Asian origin have a similar point of view and face the same difficulties. We have a few thoughts on the mandate and the procedure used by the human rights commission.

My fellow Pakistanis are among the most highly qualified people in Ontario, but unfortunately this is not reflected in our employment statistics. Repeatedly, the Ministry of Labour surveys and Frances Henry's study document that we are the most highly discriminated group. So far, however, little or no assistance has been provided to us by OHRC. Reference has been made to the Qureshi case.

The present structure and code are inadequate, and the operations of the OHRC are conducted in such a way as to make the complainant helpless. The structure of the OHRC needs to be revamped. It should be made into an independent body comprising representatives from ethnic, nonprofit organizations. The operation of the OHRC should be the responsibility of these agencies rather than the government. This would ensure equal access to ethnic minorities. This is the organization that we as visible minorities turn to to seek redress.

The second area we wish to address is part I, section 2.4 of the OHRC code on employment. As mentioned earlier, we are suffering from unemployment and underemployment. We recommend that the OHRC code should be changed and brought into conformity with section 15 of the Charter of Rights and Freedoms. We do not think the onus should be on us to prove why we are discriminated against. In other words, we recommend the removal of the portion of the clause starting from "because," and that again is part I, section 2.4.

After years of bitter experience, all visible minorities have come to the conclusion that more stringent steps are needed to remedy the situation. In particular, the violation of the OHRC code should be considered an offence and violators should be prosecuted under revised legislation, as promised by the government of Ontario. There is a reference from where I am pulling this.

It is our feeling that all big agencies are hiding under the cover of

systemic discrimination. There is no such thing as systemic discrimination. It is kept there for the protection of the management. We the minorities call it "systematic discrimination." We are urging that these built-in systems be removed and that people responsible for them be held accountable to the OHRC.

Several surveys have found that senior people in various agencies act as bottlenecks and are biased. Again, there are further references, and the last reference is also being attached for the committee this morning.

We are also recommending that OHRC offices be more open, to process complaints more expeditiously. People who feel they are being discriminated against should not be put off from lodging a complaint by the lethargy or lack of progress by the OHRC. We are also looking for means and methods where new programs and incentives are introduced but that they are not used against minorities. I am referring to the student internship programs, the French Language Services Act and of course, employment equity.

We feel that the OHRC should be further strengthened to accommodate complainants, especially successful complainants. The code must be expanded to prevent the victimization of successful complainants later on.

The structure of the OHRC needs a complete overhaul. We recommend that it be restricted to comprise representatives of organizations from visible minorities. This would automatically eliminate the lack of sensitivity and understanding displayed by OHRC staff and the commission at present.

This process would be a ready resource to other government bodies and the commission itself. There is constant discussion about education and sensitivity training of staff at large institutions, government bodies and the community at large. It remains a source of constant challenge which will be alleviated after incorporating the proposed changes. By this procedure, we are introducing a ready body of knowledge, resources and direct networking to all the minority groups. This will also generate a sense of partnership in the conduct of OHRC operations and it will become proactive in outreach and education. We feel this will encourage more participation by the community.

We have reasons for our strong feelings on this subject, as we, the Muslims, are the least understood of all people. Despite an estimated Muslim population of 150,000 in Metropolitan Toronto, there is no Muslim in the OHRC in Toronto. There is hardly any training provided to the OHRC staff to sensitize them about Islam, the second-largest religion in the world. The documents presently available for training are pitiful. If there were better training, we would not have witnessed such a poor handling of the Rushdie affair.

It is customary for any government that wishes public participation to give its indication by providing facilities and allowing sufficient time for small voluntary organizations that operate on shoestring budgets. The manner in which this advertisement was placed on 14 September allowed only a week for appointments and hardly any time in between for preparation. The advertisement itself was very small and was therefore missed by most people. There was no press conference, and the advertisement was not placed in any ethnic media. Personally, I did not find out until 29 September at 4:30, and only that, too, because I phoned in for messages. Within a span of three or four days, I had to co-ordinate with all members. To confer, especially nationally, is an impossible task. The panel has put us in a position of performing an impossible feat.

We small operations do not have the staff to do things for us. All this

has to be squeezed in with other numerous things we do in our daily lives. If we are given the mandate to do this work, we will be in a position to provide assistance in the implementation of other initiatives, where we are the thrust. We will be successful, as we understand what the problems are and where things get stopped.

Mr J. B. Nixon: I would like to congratulate you on your presentation. I think you have just about performed the impossible task. You have made some good points.

1010

Mrs Alam: I think I have.

Mr J. B. Nixon: I have a couple of questions, mostly of clarification. One is just because I am a lawyer. On page 2 you suggest the removal of the word "because" from a section of the act. Maybe our counsel can help me. I am just having trouble finding out which section of the legislation that is.

Mrs Alam: It is where it says that you may not be discriminated against and that you should be treated equally in employment, and then it proceeds to say "because of race, class, creed, sex." You may improve on it because you are a lawyer; I certainly am not a lawyer. My argument is that we face difficulties because we are able to prove discrimination, but we cannot prove that it is because of race or sex or whatever. You can clearly see the discrimination.

I am requesting that you give your attention to the two attachments I have given you. Both those decisions of the arbitration board clearly point to discrimination, and we cannot do anything about it because of the way the Human Rights Code is worded. I may have won a battle, but I certainly have not won the war.

Mr J. B. Nixon: Can you help me then? I have not read those cases. You are saying that the finding of the commission was something to the effect that discrimination had occurred, but there was no evidence that discrimination was on the basis of race, ancestry, place of origin, etc.

Mrs Alam: Okay; I will correct you. That is the arbitration board. We do not have a Human Rights Code within the collective agreement, so they cannot go into the Human Rights Code part. They were also able to see very clearly discrimination but they could not nail it down on the basis of race or class. As far as I am concerned, I do not give a damn whether it was for whatever reason. The fact is that I was clearly discriminated against. These people should be prosecuted. They are using their public offices to discriminate against people.

Mr J. B. Nixon: What were the circumstances of this case?

Mrs Alam: It was a competition case. In the Ontario civil service it is so rampant that every competition is held almost to legalize whatever they wish to do. I, as a single person, have won three decisions indicating that I have been discriminated against. After you have won three decisions, you start looking at them and wondering: "So what? Where do I go from here?" Then, of course, it is like, "Yes, she is a big troublemaker." They do not see that they were wrong. There is one decision that says they went out of their way. It was a recompetition.

Mr J. B. Nixon: Just for clarification, is this a decision of the Ontario Human Rights Commission, or is this a decision at arbitration?

Mrs Alam: At arbitration.

Mr J. B. Nixon: Did the union put this decision before the human rights commission and ask the human rights commission?

Mrs Alam: No, they did not, because they had that crazy stuff called "double jeopardy" or whatever. That is another thing we have to look at. As a human being, I think I should have rights to go wherever I choose to go. You cannot go to two separate agencies, and the human rights commission is so useless.

Mr J. B. Nixon: The double jeopardy is in the collective agreement.

Mrs Alam: Yes. I went to them first, and every time I phoned them to find out where things were at, they had closed the file. I said, "How come?" and they said, "The Ministry of Community and Social Services requested it." They cannot request to close it; I am the complainant. They never investigated. They never did anything; they just sat there.

Mr J. B. Nixon: The other question is more by way of a suggestion. On page 4 you talk about the structure of the commission, and I think you are particularly referring to the makeup of the commission itself and the commissioners.

Mrs Alam: Right.

Mr J. B. Nixon: It is probably obvious, but I want to clarify. You are suggesting not that it should be exclusively composed of representatives from visible minorities for all cases, but only in those cases where you are dealing with discrimination or alleged discrimination on the basis of colour and creed or race. Surely, you are not suggesting that only visible minorities should be dealing with cases of handicapped or discrimination on the basis of sex or some other grounds like family status or public assistance or sexual orientation.

Mrs Alam: What I am trying to suggest is that there should be an overwhelming majority of minorities in there, because most of the issues are related to minorities. Of course, you are quite correct that there are handicapped and there are people on public assistance who are discriminated against. I am very sensitive to those issues, because I have worked with professional rehabilitation for 10 years and now I am working in the income maintenance department, so I understand all those people and I have a very good background to all that.

Mr J. B. Nixon: Can I suggest to you, though, that if you look at the statistics, the primary origin of complaint before the human rights commission is complaints on the basis of discrimination because of a handicap. That is 40 per cent of the cases.

Mrs Alam: Yes, but I would like to suggest that we as minorities do not come to the human rights commission, because it is waste of time. Frances Henry's study suggests that a Pakistani is discriminated against four times more than any other minority, and yet you can count the number of people who have come to the human rights commission of eastern origin. You can count them on your fingers, and the Qureshi case that I referred to you has been there

for eight years, nine years, and there is still no decision. I mean, is that justice?

Mr J. B. Nixon: Okay. Someone else from my side can use some of my seven minutes.

The Chair: You have used nine of the minutes now.

Mrs Marland: I just want to be quite sure that these grievance settlements that you handed out, Mrs Alam, are both your own personal case. You are here speaking on behalf of the National Federation of Pakistani Canadians, but you also have your own personal case that you have concerns with.

Mrs Alam: These are all settled. I am only using them as references because they are very recent decisions and they are the most highly quoted. I am certainly not making it a personal issue. Our organization is a member of the Canadian Ethnocultural Council and we are also members of the Coalition of Visible Minority Women. I am also a member of the Ontario Public Service Employees Union. I am a member of a lot of groups, so I am very up with what the feelings and issues of people are. You certainly remember me from speaking at that conference last October. These were the documents I was referring to. That is why I brought those documents, so that if there were questions you would be able to refer to those documents.

Mrs Marland: I am not suggesting that you are making it a personal issue. I just wanted to confirm that these two documents that you have circulated are your case.

Mrs Alam: Yes. I could definitely have gone and got more, but I had no time, absolutely no time.

Mrs Marland: If you do not have one, you might be interested in obtaining a copy of OPSEU's presentation yesterday to this committee, because it was a very powerful, very complete presentation. I think as a member of OPSEU, you would be very pleased with how well the delegates made their point before us yesterday.

Mrs Alam: I worked with them on the—

Mrs Marland: That is in my opinion, but I do not know. I can only speak for myself on this.

Mrs Alam: I appreciate that. Okay.

1020

Mrs Marland: I too want to pursue the point that Mr Nixon was making about how you would like to see the Ontario Human Rights Commission composed. I want to be very clear about what it is that you are saying. I heard your answer that the reason visible minorities do not go to the Ontario Human Rights Commission is that they feel the process does not satisfy their grievances. I do not know whose fault that is yet. We hope, eventually, on this committee, to hear from some experts in terms of the people who litigate human rights grievances and the people who work within the commission and can tell us first hand what some of the problems are. We have sat now for four days, but we have not heard from a single individual who worked in the Ontario Human Rights Commission, nor have we heard yet from a single individual who litigates those kinds of grievances.

Certainly, before this committee finishes its hearings and is in a position to draft a report of recommendations to the Legislature to address your concerns and the concerns of the other groups we have heard from, we need to know how it is working and why it is not addressing the groups' concerns that are being brought forward, such as yours this morning.

You are saying that your people do not come before the commission out of frustration through experience, I guess. It is a concern to me that any group would not take the recourse that is established for its own protection.

I do, however, have a concern about your statement, "We recommend that it be restricted to comprise representatives of organizations from visible minorities." If you are not saying "restricted only to," I can agree with you, but I just want to be clear what it is you are saying, because the rights of all of us, as Mr Nixon just outlined, were the points that I have concern about. My rights do not stem necessarily from my colour, religion or creed, nor any longer, probably, from pregnancy, as it says here, but certainly there are a lot of categories here where I might at some time have to make a claim to the Ontario Human Rights Commission. I would hope that the people who were qualified to deal with me who work for the commission and take direction of policy from the commission—I would hope that the commission is as broad-based as the concerns that are made here. Would you not like to see the commission be broad-based?

Mrs Alam: Yes, I certainly agree with you. What I am really after is that maybe the decision-making power lies with the communities, and certainly it could be a white minority community, because the whites are a minority now. Putting all the minorities together, we become a majority. We are all pockets of minorities. The only difference is that we visible minorities are nowhere in decision-making. We wish to share, and the problem is that we are not understood because of a different background or a different culture.

I was referring to the Rushdie affair, which was a very sensitive matter for us. It was not understood. It was sheer ignorance. I attended the RCMP conference Policing for a Pluralistic Society. On the last day, they distributed the training documents that they use for their officers. For four days I had been hearing, "We have a very good package; we train our people thoroughly." The package, the training, was for two hours.

The document, unfortunately, was distributed on the last day, as we were leaving. I was fuming on the aircraft on the way home. There were only about three sentences in that document on Muslims and they were irrelevant statements. It said nothing about what is important to me as a Muslim. When they get that kind of stupid training, no wonder they did not know what was bugging us. You never saw such demonstrations and you never saw so much outcry all over the world as you saw over that book. Our government did not understand and did not try to understand and did not want to understand. We are the weak citizens of this country and we need assistance. This is why I am here, even though I had absolutely no time.

Mrs Marland: If you say that you are the weak citizens of this country, would you agree that there are also other equally weak citizens and that the only way the Ontario Human Rights Commission can work is if it is broad-based enough that there would be a sympathetic, realistic attitude of the commission towards all groups?

The very reason we are having these hearings was raised by the fact that the former chief commissioner, Mr Anand, had hired seven whites. When you talk about nonvisible minorities, that is what got this hearing off and running.

I think you have a Legislature that is sympathetic to your concerns, but I do not think that what you are really asking for is that we do a 180-degree turn and make the Ontario Human Rights Commission only visible minorities. I just want to be clear.

Mrs Alam: I think I will put on my civil service cap and explain to you that Raj Anand, whom I know very personally, was a very able man—is a very able man. He was forced to do whatever he did; he was made to hire all those people that he did hire. If his hands had not been tied, he would not have done what he did.

Mrs Marland: Who tied his hands?

Mrs Alam: The present government. It is exactly what I am talking to you about. In those decisions that I am giving you where the hiring took place, they had made up their minds whom they were going to hire. In the committee report that is submitted there are at least three instances where the people were not part of the competition and they were put in.

He was asked to do that, and this continues to happen every day. I witness that every day because I am a civil servant. Once you have been through arbitration and you have been through the human rights process, people are looking for guidance and moral support and they find you. The number of people I have provided assistance to in the last 13 years is just absolutely countless.

There are human rights things that people are not aware of. People do not know the grievance procedure. And if you are at all aware of the east Indian culture, we are very quiet people. I have learned how to speak now, after being harassed; 13 years ago, if you had asked me to make a presentation, I would have said: "There's no way. You're out of your mind. I'm not coming here."

Mr Philip: I am somewhat concerned, because you made a very serious accusation that we have not heard before and I hope that it can be clarified. You said that Mr Anand, and supposedly the people at the Ontario Human Rights Commission, were told—and I forget the words you used, but the implication was by the government—whom to hire in those key posts.

Mrs Alam: Right.

Mr Philip: We have not received any evidence of that, and I am wondering if you can be specific as to who told whom to hire whom.

Mrs Alam: No, I think you are going to get that from Mr Anand himself, but I am making an observation. I see this at all times in civil servants. Until you make discrimination an offence, you will get nowhere, because these people will continue to do what they are doing. That is why we are asking that. In that decision, two people were nailed separately for going out of their way to make sure that I did not get the job. It was a rerun of a competition.

Mr Philip: I do not want to recycle your particular problem—

Mrs Alam: No, no, it is not my particular—

Mr Philip: —I want to deal with what is on the record—

Mrs Alam: Excuse me, it is not my particular—

Mr Philip: —as a very serious accusation.

Mrs Alam: I am only using that as a sample. That is not my particular problem. That case is over with. I never discussed that until that decision was out. I am merely stating to you that it is a very common practice. If a person like me can go through and get three decisions within four years saying that these people are discriminating, what does that tell you? That there are millions of competitions set up, being conducted, that are unfair. This is another example.

Mr Philip: I do not want to sound like a defender of the government, but I do want to make it clear that what I am now hearing you say, and I may be wrong, is that you do not have any evidence that there was any political tinkering or direction in any of what might have been called the irregular or questionable hiring that Mr Anand and the human rights commission did; that as far as you know, you cannot give us an instance of a politician or anyone in a politician's office who gave Mr Anand directions to hire a specific person at the human rights commission. Is that correct?

1030

Mrs Alam: Do you remember the document that has been produced by the Ministry of Citizenship?

Mr Philip: Yes.

Mrs Alam: There are at least three irregular hirings.

Mr Philip: We are not questioning the irregularities. You said that there was political—and "political" means—

Mrs Alam: What I am trying to say is that he was asked to do that. When you know a person as well as I know him—

Mrs Marland: Mrs Alam said "government," she did not say "political."

Mrs Alam: Pardon?

Mrs Marland: You said "the government."

Miss Roberts: The inference was "the government." The inference was "political."

Mrs Alam: Yes.

Mr Philip: The implication was that the Liberal government told Mr Anand—

Mrs Alam: No, no, I said that within the government, within the civil service, these things happen 90 per cent of the time, and he was asked to do that. The very first person who caught this story was the CBC and I heard that both in the morning and in the evening. This Alan story thing came in months later. If you hear the original interview—

Mr Philip: Mr Breaugh has a supplementary.

Mr Breaugh: I do think we should try to clarify this. I heard you say—you did not name names, you did not give a specific thing, but I have heard you repeat now twice that it is your belief that there was intervention and that Mr Anand did not make those decisions of his own free will.

Mrs Alam: That is right.

Mr Breaugh: That is about as clear as you are going to get.

Mr J. B. Nixon: Can I do a supplementary question?

Mr Philip: Sure.

Mr J. B. Nixon: Who told him?

Mrs Alam: I believe you are going to get Mr Anand as a witness.

Miss Roberts: No, no, you have made the allegation. You said it is your belief. On what grounds do you make that belief?

Mrs Alam: I make that belief on the grounds that I know Mr Anand and—

Miss Roberts: But you have no personal information?

Mrs Alam: I have no—

Miss Roberts: Thank you. That is all we want to know. She has no information, only a belief.

Mrs Alam: But I understand him and I also know the civil service. That is why I am saying what I am saying.

Mr Philip: Thank you. I have a couple of questions on your brief though, on page 3. In the last paragraph you say, "The code must be expanded to prevent the victimization of successful complainants later on." Are you saying that section 40, which deals with an order that can prevent harassment of a complainant, is not strong enough, or are you suggesting that there should be stiffer penalties in the case where a successful complainant has been harassed by an employer or by whomever they were successful in launching the complaint against?

Mrs Alam: I am not a lawyer, but what I am saying is that we do not provide the support system to a person who has succeeded in lodging a complaint. Invariably, people are almost killed after they win a case, so what I am saying is that maybe the code should be expanded so that we give them support services. They should be able to come back with a telephone call and not have to wait for ever.

Mr Philip: So you are suggesting a sort of emotional support service, rather than—

Mrs Alam: Yes, and the fact that they need very fast service, very quick service, and that it is an ongoing case.

Mr Philip: Okay. My question to you on the second paragraph from the bottom is that I am not sure what you are talking about there or what you are referring to. I wonder if you can explain—

Mrs Alam: Are you talking about the new programs?

Mr Philip: Yes. You say, "We are also looking for means and methods where new programs and incentives are introduced but that they are not used against minorities." Can you tell us how the student internship program is used against minorities?

Mrs Alam: For example, the student internship program is a political football. Students are not selected by abilities and it is definitely not a merit program the way they are saying. I know of several instances where students from honour programs with very good marks have competed and they have not been invited for an interview, and this is a program especially set up for children of minority backgrounds. It is being used politically and I am concerned.

The immediate effect is that these people are denied their right. The after-effect is that these people who get in, the way they do get in, are the people who continue to harass people when they come to higher positions. This is also another observation.

Mr Philip: And the French Language Services Act?

Mrs Alam: The French Language Services Act is not being used uniformly. If it is a white, a person may only have minimal French. They are being hired. If it is a person of minority background, he can even have French at the advanced level and they will say, "Hey, but we need superior language." They will not provide training; they will not provide any other service to people of minority backgrounds. The service has not even come and there are competitions and we have already witnessed this.

Mr Philip: Are you saying then that perhaps a Canadian of Haitian background whose native language is French does not receive the same treatment as a Canadian, a white—I cannot say Anglo-Saxon, but a white Franco-Canadian—whose native language is French? Is that what you are saying?

Mrs Alam: No, we are not talking about whose native language is French.

Mr Philip: Oh, okay.

Mrs Alam: Within the civil service, and absolutely within the civil service, you can count on your fingers the number of people who speak the French language. The thrust has been that the program is more important and French-language services are something that we have to develop in our people. They are using that in a different format. If it is a white and a person knows only primary-level, he or she is trained and hired in a French-designated position. At the same time, you have another person of a minority background and he may be at the advanced level, which is a workable level, and he is not hired.

The Chairman: Thank you for your presentation. The committee will recess for 20 minutes. The next presenter is here, but we cannot find him at present so we will reconvene at five to 10.

The committee recessed at 1037.

1110

The Chairman: I call the government agencies committee back to order. We continue with the agenda on the Ontario Human Rights Commission. We have before us the Canadian Jewish Congress, Ontario Region, Bernie Farber. Perhaps for the record you could tell us who is with you and some background of your organization. You have 30 minutes. Use whichever portion you want for your presentation. The rest will be reserved for questions. You may proceed.

CANADIAN JEWISH CONGRESS, ONTARIO REGION

Mr Satok: My name is David Satok. I am the chairman of the joint community relations committee of the Canadian Jewish Congress, Ontario Region. Beside me is Bernie Farber, who is our director of research.

The Canadian Jewish Congress, Ontario Region, is the democratically representative organization of the province's 150,000-strong Jewish community. Acting as a voice of Ontario Jewry, congress has made numerous representations to government and intervened in legal proceedings on such matters as antidiscrimination laws, racially restrictive covenants, religious education in the public schools, antihate laws, civil liberties, human rights and civil rights, education rights, minority rights and domestic peace and security.

The Ontario region of congress is part of a federated structure that includes seven other regions: Atlantic, Quebec, Manitoba, Saskatchewan, Alberta, Pacific and the national capital region. Canadian Jewish Congress was founded in 1919 as a national entity and is representative of Canada's 350,000 Jewish community.

Our aims and objectives are as follows:

To develop the highest standards of citizenship in the Jews of Canada by encouraging, caring and participating in activities of a national, patriotic, cultural and humanitarian nature and the furtherance of the best interests of the country and of the Jewish people;

To act in matters affecting the status, rights and welfare of Canadian Jewry;

To investigate antisemitism and to devise means of abating its influence throughout the world generally and in Canada in particular and to promote the growth of a spirit of toleration, understanding and goodwill between all ethnic elements in Canada, and particularly between non-Jewish and Jewish citizens;

To study problems affecting the foregoing objectives, to conduct research and encourage studies thereon and to publish periodicals, pamphlets, other literature and information on the work of Canadian Jewish Congress and the furtherance of its objectives; and

To carry on and assist in efforts for the improvement of the social and economic and cultural conditions of Jewry and the mitigation of their suffering throughout the world and to co-operate with other agencies in rendering assistance and helping to rehabilitate Jewish immigrants and refugees.

It is in pursuit of these aims and objectives that the Canadian Jewish

Congress appears before the standing committee today to discuss issues relating to the Ontario Human Rights Commission. We have a long-standing history on major issues covered under the Ontario Human Rights Code. As far back as 1944, we made representations to various provincial government bodies in regard to the Racial Discrimination Act. We were active in presenting our views both in 1951 regarding the Fair Employment Practices law and in 1954 with the Fair Accommodation Practices law.

In 1955 we made representation to Ontario's McRuer royal commission inquiry into civil rights and in 1976 to the self-study committee headed by the Reverend Bruce McLeod of the Ontario Human Rights Commission, in which congress recommended specific amendments to the Ontario Human Rights Code. In 1981 we acted as adviser to the complainant in the case of Morely Rand, in which the Ontario Human Rights Commission upheld the employment rights of a Sabbath-observant employee.

More recently, we have been involved both with our constituent members and the Ontario Human Rights Commission on various issues of perceived discrimination, both individual and systemic.

In this light, congress considers the establishment of the Ontario Human Rights Commission and the Ontario Human Rights Code as a paramount indicator that the government of Ontario wishes to promote the concept of human rights, protect minorities and enhance an Ontario public whose aim in a multicultural Canada is to celebrate our differences.

Over the last couple of years we have worked arm in arm with the Ontario Human Rights Commission on a number of matters of mutual concern. Most recently the commission was most helpful in assisting both the Canadian Jewish Congress and the Jamaican Canadian Association in our joint complaint regarding a whites-only rally held by the former leader of the Canadian Nazi Party, John William Beattie. We have also in the past received assistance from the OHRC in interpreting the code, specifically in regard to creed and religious holiday observance.

In the most recent past, we have had situations in which religiously observant Jews were refused time off from work in order to observe religious holy days. As well, other public institutions have scheduled exams on Jewish high holidays, placing members of our community in a position of either having to forfeit the exam or contravene religious regulations. Many of these issues were satisfactorily resolved as a result of ongoing work between congress and the OHRC, who assisted in interpreting the code and in some cases intervening on our behalf. Clearly as a result of these specific cases as well as other religious freedom issues—for example, the wearing of kirpans by observant Sikhs in the public schools—the Canadian Jewish Congress is most concerned with the need to confront and eradicate systemic discrimination within all levels of Ontario society.

In the enlightened last decade of the 20th century, one would hope that workplace harassment for both visible and religious minorities is no longer an issue. However, congress continues to receive complaints from members of our community that deal specifically with workplace harassment. We have, for example, received complaints from members of the Jewish community who, after being identified as Jews in the workplace, have suffered anti-Semitic slurs followed by racially motivated negative repercussions during their employment. Although the management involved may have been sympathetic, there was little concrete action taken to stem this form of ongoing, systemic discrimination.

We are further concerned about reports, emanating from various visible religious minority communities, suggesting that both within the public and private sectors employment opportunities and chances for advancement are limited due to race, creed, colour and nationality. This form of systemic discrimination, whether it occurs on Bay Street or in government ministries, must be fought with determination and vigour.

In terms of access to the OHRC, we note that those members of our community who attempted to contact the OHRC unfortunately found it to be a relatively frustrating process. Complaints we have received from our community suggest that reaching a counsellor or investigator to lodge a complaint was a particularly difficult task. Phone lines were constantly busy, messages were not returned and when complaints were finally filed, the amount of time towards investigation, conciliation and resolution was such that the original complainant found it very difficult to follow it through.

It is with this in mind that we suggest consideration be given to assure that enough human rights workers are on staff to handle queries and complaints. Further, and possibly of more importance, the quality of the investigator and the ongoing investigation is essential to the effectiveness of the OHRC. There must be a clear understanding among investigators of all the legal aspects in regard to the Human Rights Code, the Constitution and any legal matters that may impact on various complaints. This, we believe, would go a long way in assuring the general public that the Human Rights Code has teeth and the Ontario Human Rights Commission is willing to investigate in both a qualitative and quantitative manner.

Another concern we wish to bring to the attention of the standing committee is what we perceive to be a lack of ongoing communication and process between the Ontario Human Rights Commission and various government ministries. In the last few years, congress has been most concerned with the issue of problematic racial stereotypes in classic literature. Most significantly, this problem has been identified with the teaching of the Merchant of Venice in Ontario high schools and the resultant complaints from Jewish high school students of anti-Semitic harassment. The Canadian Jewish Congress has attempted time and again to involve either the Ontario Human Rights Commission or the Ministry of Education in developing appropriate guidelines for the teaching of such racially sensitive material. Unfortunately, neither the commission, nor the Ministry of Education, nor the race relations directorate, has responded in any meaningful way. The Ontario Human Rights Commission has insisted that it has made representations to the Ministry of Education, under whose auspices this issue falls. The Ministry of Education insists that the ongoing development of such issues falls within the purview of the Ontario Human Rights Commission. Sound familiar?

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The buck must stop somewhere. In such cases, congress believes that the ultimate responsibility in dealing with these matters rests with the Ontario Human Rights Commission, which should have the power, if needed, to conciliate or impose some form of settlement so as to ensure that Jewish children in Ontario public schools are protected from anti-Semitic harassment and negative stereotyping.

Congress has always believed that the best way to combat racial stereotyping and discrimination is through ongoing and progressive education. In this light, we have worked with various high schools in and around Ontario in presenting race and ethnocultural relations workshops on an ongoing basis.

To date, congress estimates that we have presented such workshops to well over 8,000 Ontario high school students. We note with interest, in discussions with teachers following these workshops, that they have very little knowledge of any education programs being developed by the Ontario Human Rights Commission of a similar nature. We would suggest that it is the responsibility of the Ontario Human Rights Commission to develop such workshops and to work within the school environment to better prepare Ontario students for a multicultural existence. Thus, it is imperative that appropriate financial resources be made available to the OHRC for such work.

It is, we believe, through the development of a process of education that the Ontario Human Rights Commission can best confront systemic discrimination as well. As programs dealing with human rights and ethnocultural relations are necessary within the school system, it is just as important that these resources be available both within the public and the private sectors. We are cognizant, for example, through cases that have been investigated by Canadian Jewish Congress regarding workplace harassment, that managers and employers have very little, if any, knowledge of programs and resources available through the Ontario Human Rights Commission to battle systemic discrimination within the workplace. Clearly, a strong effort must be made not only to create these programs and make them effective, but to ensure that both the public and private sectors are aware and take advantage of the programs when necessary.

The Ontario Human Rights Commission serves as a valuable resource and, in many respects, as a fence of protection for various minority groups in the province of Ontario. In the speech from the throne on 28 April 1987 the Premier (Mr Peterson) Ontario indicated:

"The Ontario Human Rights Commission has made a major contribution to equality and harmony in our province. As we commemorate the 25th anniversary of the founding of the commission, my government will dedicate additional resources and strengthen its mandate....These commitments will strengthen our ability to combat systemic discrimination and help ensure that all residents of Ontario enjoy equal opportunity to employment and fair treatment in the workplace."

In order for this to indeed become a reality, we urge the standing committee on government agencies to act post-haste in developing the ongoing resources, both human and financial, that will be needed to ensure an effective Ontario Human Rights Commission.

The Chairman: Thank you. We have about 15 minutes left for questions. However, there are a couple of very important people or one very important person here in our audience today and he does not get the chance to come here very often. Mr Kanter, would you like to introduce him?

Mr Kanter: It is perhaps a bit unusual, but I would like to take this opportunity to introduce a visitor from Australia to this committee, the Honourable Dr Derek Freeman. Perhaps you would just stand to indicate your presence. Dr Freeman was a member of the Senate in New South Wales for approximately 11 years and he tells me that he received the title of "Honourable" even though he was in the opposition. He was in the opposition shadow cabinet. That process may be of some interest to the people on the opposite side of the committee. You may wish to speak to Dr Freeman after the committee session. He is also here with Lou Copeland who happens to be a constituent of mine. Mr Copeland, thank you.

The Chairman: Thank you for the presentations.

Mrs Marland: Mr Chairman, you might also like to recognize this morning the presence of one of our Ontario human rights commissioners. Dr George Bancroft is sitting at the back.

The Chairman: Thank you.

Mrs Marland: I think it is impressive that one of the members of our Ontario Human Rights Commission is here and I certainly appreciate the presence of this commissioner.

Mr Satok, your brief is very comprehensive and I appreciate your directness. Can I just ask you, referring to the second paragraph on page 3, where you have talked about the study, done in the self-study committee that was headed by Dr Bruce McLeod, in which your congress recommended specific amendments to the Human Rights Code. Were those amendments made? Were your recommendations to those amendments—

Mr Satok: I think Mr Farber can answer you.

Mr Farber: For the most part, I do not know if they were developed—I do not know if there were any specific changes to the code that were made as a result.

As I recall, the concerns at the time dealt more with issues within the private sector. Really, for the most part, we are facing some similar circumstances even today. We pointed out at the beginning of the presentation the issue of the whites-only rally. That was held on private property of John William Beattie. In actuality, there is nothing wrong in this province with holding a racist rally on private property. What we are able to do was to lay a complaint not in regard to the private property matter, but in regard to the fact that it was being advertised publicly as a racist rally. That is where this complaint stems from.

But at that point, our concerns were how do we deal with private clubs, private property matter within the code; to the best of my knowledge, I do not think that issue has as yet been resolved. There were a couple of other issues that I just do not recall offhand, but that was one of the more prevalent concerns at the time.

Mrs Marland: There has to be a way of addressing those concerns, because I do not think there is any element of our society that is more sick than that kind of rally. No matter what the purpose of it, no matter what sector of society is being attacked, that kind of event is so sick. Whether it is on private property or not, it should not—I know people talk about property rights and, "I can do whatever I like on my property," but I hope that kind of event cannot take place without everybody recognizing that the hosts are sick. We are not sure whether that problem has been addressed yet.

Mr Farber: As a matter of fact, I am quite sure it has not been addressed, because when we went to lay the complaint again with the Jamaican Canadian Association—it was a joint complaint that was laid—it was made very clear to us by the commission that a specific complaint on the rally itself would not hold any water and that the complaint had to basically come through the back door, to a certain extent, and be laid as a result of the publicity being given through the media for a whites-only rally.

Mrs Marland: Were there paid advertisements in the media for that?

Mr Satok: Yes.

Mrs Marland: What we can attack then is that advertising aspect, and that has not been addressed either.

Mr Farber: It is interesting. Whether there were paid advertisements is really hard to determine. What has happened was there was a group of about 300 posters that showed up in and around Metro Toronto, mostly tacked to telephone posts or what have you. The media, and I fault the media to a certain extent on this, then picked up on what would have otherwise been a nonevent, as far as I am concerned, and took the posters and reproduced them to some extent in various newspapers across the province. They were also held up to various news cameras and the event then became an issue.

Again, one has to balance. I think the media has a certain responsibility in terms of its sensitivity in balancing issues like this and the way it spreads the news. They in effect got free publicity on this issue and it made the front pages of newspapers across the country.

Mrs Marland: But the human rights commission told you that it could not do anything about the posters?

Mr Farber: That is correct.

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Mr Breaugh: I just want to explore briefly a couple of things that have been suggested to us, and you did not include them in your brief. A number of us are concerned that the commission does not have a clear understanding of why it is there. It seems to have some difficulty in performing its function, and there could be a lot of reasons for that. One of the things that has been suggested is that the commission ought to be given a measure of independence which it does not now have. It is now kind of attached to one of the ministries. That perhaps accounts for some of the budgeting problems and organizational problems that it has had.

I would be interested in the view of the congress on the concept of trying to establish the commission as an independent agency, not tied to one of the ministries, perhaps reporting to the Legislature directly, but trying to kind of lift it out from underneath the structure of one of the ministries, giving it some measure of independence, clarifying its role and seeing whether that would accomplish those goals.

Mr Satok: Well, obviously anything that would increase the visual capacity of the commission and give it that independence, so that it is not part of the budgeting process of another ministry, and the direct reporting, obviously we would approve of that.

Mr Breaugh: One of the other things that we have struggled with, and I am not sure that I have a clear notion in my own mind of whether this is desirable or not, is there are some who have advocated that the commission is being asked to do too much, that it cannot be all things to all people, that if you want it to function, you have to clarify its role and you have to decide, is it the place where you hear the individual complaints for the people who have a problem or do you turn that over to the courts?

Do you say we want a human rights commission which is essentially in an advocacy position, which may examine systemic violations or things of that nature, but it is not the place where an individual who has a complaint takes that, and often in three years from now you get a decision on the matter? Do you have a position on that?

Mr Satok: Yes, I think the commission should be open to the individual. The complaints about the individual is a question of time. It is very simple for an organization like ourselves to lodge a complaint, and we have the time to wait it out, process it and go through the—we are used to government bureaucracy. We have our own bureaucracy, right? So we can understand it, but the individual does not understand it. The fact remains that when you have this delay and nothing is happening, and it goes on and it winds on and winds on, that is where you have got this bad thing. But I think it should be open to individuals.

Mr Farber: Let me just add, in terms of the relationship between the advocacy role and the legal role for lack of a better term, in many respects the commission is similar, in a way, to a child welfare agency where you have a social worker who has to both play the role of an advocate, advocating social work policies, and then dealing with parents, working with abusive children, etc. Then, on the other hand, it has a legal role to play and that is to ensure that a child's welfare is being maintained. It is very hard, sometimes, for a social worker to maintain the balance on both those issues.

Well, the same can be said for investigators and workers within the human rights commission. However, I do not believe we have a choice here. There is no question that minorities in this province do need a fence of protection and it is our sense that the courts are even more cumbersome. In terms of time delays take a look at the justice system. If a person were to try and claim that the Charter of Rights, for example, is not being upheld properly or there is a complaint vis-à-vis discrimination through the courts, we are looking at what could possibly be years and years.

The commission for most individuals, as Mr Satok has pointed out, is the first line of defence. They know that the commission exists and for the most part, when they get through—if they get through—their complaints are at least dealt with professionally. But what we are hearing time and again, the concern is not so much between the legal and the advocacy, the complaint is, "My God, I brought this through seven months ago and I am still waiting for a phone call back."

We had one young lad who complained about a work harassment case almost eight months ago, and we investigated it as well. Now we are working with this lad, as well as with the commission in terms of trying to resolve it, but it looks like this case, by the time it gets resolved, will go on for two years. Although shorter than a court case, it is a specific problem. This kid will be 18 years old. He was only working part-time and he is just going to lose interest. This was a young person who had a legitimate complaint.

Mr Kanter: First of all, I want to commend Mr Satok for the brief he presented. I think it is quite evident that the Canadian Jewish Congress has been in the forefront of attempts to establish predecessors to the Ontario Human Rights Commission and to strengthen it. Your suggestion basically is that we put more resources, human and financial, into the human rights commission.

Mr Satok: And better ones.

Mr Kanter: And better ones. I have no difficulty with any of those suggestions.

Mr Satok: More is not necessarily the answer.

Mr Kanter: Okay; that is sort of the area I want to pursue. Specifically, your organization has a long history and quite a lot of resources and expertise in this area. Is there any additional role that a group like yours could play in this area? You have said you are used to dealing with bureaucracy. We have had a number of witnesses appearing before us. I have not been here for all of the deputations, but I take it there has been quite a number of deputants who have been concerned about the bureaucracy. Do you see any additional role that a group like yours could play in helping some of the individual litigants or indeed groups that appear before the commission? You have asked us to do more for you. Is there anything else you can do for us?

Mr Satok: Well, obviously we are available to help members of the Jewish community deal with the commission, and we will assist them. The members of the commission, as far as I know, are appointed on an individual basis. They are not representing any organization. Maybe there should be another layer of organizations like the Jamaican Canadian Association and the Canadian Jewish Congress as sort of an advisory body to the commission to try and cut through the red tape from their own perspective.

Mr Kanter: That is an interesting suggestion.

Mr Farber: Can I also add, because Mr Breaugh also mentioned it, the issue of independence is, I believe, a very important issue. Our biggest problem, the one that we have been struggling with, as was mentioned here, was the issue of the Merchant of Venice. Let me tell you, this dates back to 1984, and we have been promised guidelines by the Ministry of Education and the human rights commission since 1984. It is 1989 and we have yet to see these guidelines, and year after year after year we receive complaints from Jewish children around Ontario that they have been subjected to anti-Semitic taunts and slurs as a result of a lack of guidelines and a lack of action by either the commission or the ministry. I do not know whose fault it is, but we still have to deal with the complaints, the concerns and the parents' problems on these issues.

My sense is that if there was more independence, the commission would not feel as reluctant to deal directly with a ministry in a situation like this. This lack of action is really inexcusable. By the way, it is not only happening in terms of Jewish children; there have been complaints from other visible minority communities too with regard to racially problematic stereotypes.

I look at the teaching, for example, of the Adventures of Huckleberry Finn. It is a wonderful antiracist novel, but when it is taught in grade 7 and you hear the term "nigger" used 200 times, the black child in that class becomes nigger as a Jewish child becomes Shylock. That is what they take away; they do not take away the wonderful lessons. Until either the commission or the ministry gets off its duff and starts looking at this problem, it will become more and more problematic and more significant.

Mr J. B. Nixon: I want to go back to a point that Mr Kanter raised. I am going on a bit with that point. I am talking about representation on the

human rights commission, whether commissioners should be appointed because they represent a particular group that suffers discrimination, whether it be the disabled, single mothers, the black community, the Jewish community or whatever.

The suggestion was made by some who have appeared before us that the particular group they represent must have representation on the commission. I am not sure that is true. I am not sure that it is not true, either. I would like your advice. Do you think, for instance, we have to have a Jewish person on the commission? Do we have to have a black person, a Muslim, a disabled person on the Ontario Human Rights Commission? Do we have to have representatives from every group that is being discriminated against?

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Mr Satok: I will give you my practical advice. If you had a representative from every group, you would have a 200-member commission, so I do not think you could really afford that.

We have the same problem. We had a conference on racial harmony sponsored by the provincial government. We tried to run a meeting in four hours. After the meeting, and it was a very successful one, we had complaints from about six other groups that they were not speakers. There comes a point in time where efficiency has to have a certain amount of precedence. I really think it is a question of getting the best people for the commission.

The Chairman: We have run overtime a little bit. We want to thank you for attending.

Mr Philip: May I just ask a supplementary?

The Chairman: One supplementary? A short one.

Mr Philip: On the matter of independence, would it be your view, as has been suggested by certain other people, that the chief chairman of the Ontario Human Rights Commission should be appointed by a committee of the Legislature by consensus rather than by the government? Should that person be appointed for a set period of time, as is the Ombudsman, namely for a five-year term, revokable only by the Legislature for obvious proof of incompetence or malpractice in some way?

Mr Satok: I do not think we have a view on how that person should be appointed. Obviously, I think a fixed term is the proper type of appointment.

Mr Philip: And that should be in statute rather than at the discretion of the government.

Mr Satok: That is right. Then it gives the head a certain amount of independence. But I think you are going to have to decide how you appoint him.

The Chairman: Our next group is the Organization of South Asian Canadians. Mr Nambiar, perhaps you would like to come up to the table. I am sure you are aware you have a maximum of 30 minutes for your presentation and questions. You may proceed.

ORGANIZATION OF SOUTH ASIAN CANADIANS

Mr Nambiar: We welcome this opportunity to present our views on the Ontario Human Rights Commission, its mandate, structure and resources.

Perhaps before going into that, on a procedural matter, we just would like to say that our organization is not very well equipped in terms of resources, personnel and so on. The short time we had to make preparations to come before this committee is something we would like to bring to your attention, to see if in any way we can have some more time so that we can have a better presentation made.

Although the commission has been functional since 1962, it is common knowledge that there continue to be large areas of dissatisfaction and discrepancy between the code requirements, the government commitments and the public expectations, on the one hand, and the commission's capacity to deliver, on the other.

The reasons are fairly well known to those who are involved in safeguarding human rights in the province. To some extent, it has been remedied with the increased allocation that was made in 1988 and 1989, but that in itself, in terms of the requirement, I believe is considerably lower than what the commission would like to have at the present juncture to carry on.

In addition to that, the situation following the resignation of the erstwhile chief commissioner once again has introduced considerable scepticism in the minds of the visible minorities and the new immigrants as to the sense of direction the Ontario Human Rights Commission might take from now on.

I would like to add very quickly, there is no reflection on the present chief commissioner, whoever is there now, but that is the feeling we have, whether the inquiry and all the rest of it might make the commission say, "Okay, let's wait and see what the recommendations are going to be before we take on some of the things they wanted to do or some of the new things that they thought they would like to indulge in."

As far as the future mandate and role of the human rights commission is concerned, basically our organization would like to see the commission rid itself of some of the stumbling blocks in the way of speedy investigation and disposal of individual complaints. I would not like to comment about the question you raised earlier. We will come to that later if you still want to ask us that question.

As it is presently conceived by the public, the human rights commission addresses the grievances of people with individual complaints. However, to address the grievances of people with disabilities and visible minorities particularly, that has not been done in a big way so far. If the commission wants to do that as well as it should, as well as the public feels it should be doing, obviously the workload of the commission will increase. If speedier investigation is to be achieved—and that was one of the problems even when the workload was small relative to what it is now—there has to be an increased allocation of resources at various levels in the commission's offices, both in Toronto as well as elsewhere in the field.

In addition, our organization would like to see priority-case handling of complaints. In other words, instead of queuing them and taking them in chronological order according to the date, if something is more urgent, that

should be put on the faster track and it should be moved along faster so that matters of greater importance and significance are handled more expeditiously.

Our organization would support the commission involving itself in class actions. This was talked about, but obviously, I believe the go-ahead has not been given because of some legal impediments or hurdles or whatever. That is something we would like to see. Instead of 10 individuals going up with the same complaint and clogging up the commission's time, if one of them is taken, this could be a sort of precedent-setting type of situation.

We wholeheartedly support a proactive role for the commission rather than a reactive role. So far, a mention of bureaucracy was made. The organization being what it is, it has been reacting to situations. The government has said there should be a proactive role, and we wholly endorse that and we would like to see that role played by the human rights commission.

We eagerly look forward to the removal of institutionalized barriers to equality in employment, which have traditionally limited the participation of women, visible minorities, native peoples, individuals with disabilities and francophones in the workplace. Our own stress—we do not want to go into the reasons for that now—is the trust in equality in employment. There is a great deal to be done there. The government has said yes, it wants to see results, but we have not seen results. I will come to that in a minute and focus on the human rights commission there.

In the development of policy and research of the commission, our organization would welcome an ongoing dialogue—this is a question that some of you raised—with the effected segment of society, involving a semiformal advisory group—I mean semiformal, because the moment you make it formal, then people sit on the committee for its own sake, leaving the main purpose for which it is there. On a semiformal advisory group with representation from the groups on a broader basis, it is not so much a token appointment, an individual from there; it is somebody who is really involved and who can carry on the work in a more meaningful way.

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In regard to the educational role of the commission, we would like to see the commission play a proactive role again in educating the people and corporate citizens of Ontario, and more especially, the younger generation, to ensure that the citizens of this province are well aware of the Human Rights Code, its violations and compliance. That is in the area of a preventive type of situation, the educational role, so that the people who would be involved in situations like this would know: "Hey, I have to be careful. I have to blend this in with the rights of the others."

In so far as the report of the review committee is concerned, our organization would not like to dwell too much on the past except in so far as we can learn a few lessons from the review.

It is our sincere belief, and I would like to lay great stress on this, that there is greater or lesser extent of discrimination, favouritism, competition-rigging or whatever you want to call it in the hiring and promotion process of management personnel in several ministries and offices of the provincial government. You ask us for facts. I do not think you need to look more than in each ministry and you would find out what is happening.

It has been expressed by the people who are knowledgeable that the

guidelines provide a smokescreen to bring in candidates of the particular choice of whoever might be involved—it might be the supervisors or somebody; the review committee has highlighted one or two instances there—disregarding the broader objectives of employment policy. The review committee has recommended more use of service contracts with ministries, secondments, etc. Our own view is that such moves may be used as tools to staff positions with people whom the supervisors are familiar with. That is thwarting the attempts of qualified and capable individuals to get appointed.

We are particularly distressed to note that the visible minority groups did not get fair treatment during the selection process of the positions involved. As I stated earlier, it is a predilection that this situation prevails in other ministries and related offices in the province.

Before concluding, we would like to record that Raj Anand, as chief commissioner of the Ontario Human Rights Commission, brought to his office, in our view, openness, clarity and considerable emotional attachment. In many ways, he showed his eagerness to be proactive and to break new ground in tackling the issues facing the commission, both in the short term as well as in the long term. It is unfortunate that he fell victim to the innuendoes and half-truths circulated about him and given currency by others without the truth being verified. We have no hesitation at all in placing on record that in our view he is a person of honesty and sincere integrity, with a deep commitment to human rights.

Mr Philip: I certainly share the views you have expressed in the last few sentences. Indeed, members of our party at no time called for his resignation. We were interested in seeing reforms, but not necessarily in rolling heads of talented people.

I would like to talk about education more. You put some stress on that. I wonder if, in your view, the education by the human rights commission to date has been mainly in informing people of their rights under the code rather than what I would call attitude changing of the parties who are offending. Is that your feeling?

Mr Nambiar: Yes. We worked on a broader—

Mr Philip: I admit there will be some education done in the consulting, facilitating role with the employers, but in terms of what you see as education, has the human rights commission concentrated too much on simply saying, "If you have a grievance of this kind, here are your rights," rather than dealing with what we would call prejudice at large or in the community?

Mr Nambiar: Yes, that is what they have done. That is pretty much what they have done so far. In our view, that is doing nothing more than being a patient advocate or complainant advocate or something like that. But we want to see the province tackle the situation, go out and inform the people, the real advocacy, so that we will have less and less of these incidents.

Mr Philip: I have no way of evaluating it from the point of view of objective research, but it seems to me one of the more effective antiprejudice campaigns was done by the Department of National Health and Welfare recently in some of the ads they put on with the little child talking about his father being discriminated against because he was a psychiatric patient or had been in a psychiatric hospital. It seems to me there are a number of organizations, including your own, that may be in a better position to do education than the human rights commission can do it directly. I am wondering if you see the role

of education by the human rights commission as being one of prodding, facilitating, perhaps doing initial research or actually doing the hands-on education itself, carrying out the educational programs in the commercials, the television ads and so on. Where would you put the balance?

Mr Dharmalingam: I think you partly answered your own question. Basically, in the sense that if you look at the human rights commission since I have been in Canada, if you walk around the street and ask how many people know about it, you are going to find very few people who can talk about the human rights commission and what it does. That is one part of the thing.

What I think you are alluding to is the question of preliminary kind of things. I am more concerned with the younger generation's becoming aware, understanding why it is there and how to learn about it and complying with that. So that is a very great public education role you are talking about. I do not think, at this stage, the human rights commission has the capacity or the resources to do those kinds of things. This is where I would hope they will be able to work with organizations like us to do those kinds of things, and also to be upfront in the public through a variety of media to talk about this issue constantly. If you do not talk, people think there is no problem. The situation in Canada is that unless they see it in a newspaper, people think there is no problem here, and I think what we need to avoid is that kind of publicity, constantly working in the community, around these kind of issues and constantly educating the people. The kind of role you are talking about also is not just when people come for complaints and then you talk about how to resolve the problem—that is the thing you are talking about—and I do not think at this stage the human rights commission is capable of doing that.

Mr Philip: You talked about being proactive in providing advice, I guess, is the way in which you put it, and when I read some of the reports of some of the more successful ombudsmen in the world, be it the Swedish ombudsman, the British Columbia ombudsman or Dan Hill, it is very hard to get past the first or second page of their annual report without running into a policy recommendation, a change or an amendment to their act or some other action that should be taken by the government. They are clearly policy statements or recommendations.

Do you feel that the human rights commission has been fulfilling that kind of ombudsman policy statement, and should that be an important part of its annual report, making recommendations to government where action should be taken?

Mr Dharmalingam: My recollection of reading the annual report of the human rights commission—I do not think there is any policy statement coming out except that it gives you what is happening in the year in terms of the number of cases it has received and dealt with. Beyond that, they do not go any further. I think if they could use those kind of illustrations to talk about policy statements, it would be very welcome.

Mr Philip: Thank you.

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Mr J. B. Nixon: I have a very quick question. The advocacy role that you have talked about is what many consider to be a role that should focus on identifying systemic discrimination. "Advocacy" can mean many things to many people. I am just wondering if you mean that the commission should be focusing on systemic discrimination, identifying it and attempting to correct it or,

alternatively, performing a slightly different advocacy role; that is, going out and explaining the existence of the act, what the implications of the Ontario Human Rights Code are and what rights it gives to people. This is quite a different thing from identifying systemic discrimination in a public institution, a private corporation or whatever. I am just wondering which you are trying to encourage.

Mr Dharmalingam: I think our organization is trying to encourage the earlier part of everything you are talking about, recognizing the system and discrimination and dealing with that. But the component of dealing with the public I will not call advocacy, the public education process you are talking about, and I think there is a role for our organization to play in that, along with the human rights commission.

Mr Nambiar: It certainly is true that organizations like ours have a role to play, and we are not expecting the Ontario Human Rights Commission to have preachers or canvassers go in---that is not the type of thing---but to facilitate this dissemination, and particularly when it has to be institutionalized with the public school boards and various other institutions like that. That is where we expect the thrust from the OHRC.

Mr Velshi: I have two unusual types of questions I want to ask you. This morning we heard a deputant saying that she had gone twice to the grievance settlement board. Although we did not discuss the cases in question, we have in writing here that twice she won a case, and the end result was that she was offered a cash settlement.

Now I find this very difficult to understand, because here is a civil servant at the management level who discriminated, and when it was found that this was discrimination, it took taxpayers' money, your money and my money, to settle this problem. In effect, we are financing discrimination to that extent. Do you think the OHRC should become more punitive with individuals like this when blatant discrimination is proven?

Mr Nambiar: My own feeling is that basically, when it sits as a tribunal, it has to follow the same things as the courts and others would. On the question of whether compensation should come from the public, or taxpayers like you and me, or from the people who perpetrated it, that is a philosophic question. I know the government officials are provided immunity for their actions, but if somebody is flouting that, he will say: "All right, three years later a decision will be handed out. I couldn't care less. Maybe I will not be in this ministry."

I would not like to say, "Yes, we would like a cash compensation," or "We do not like cash compensation," but essentially, I guess that part only addresses the injury suffered by the particular party. All I would like to see is some way for the message to go down to the people who are doing this. I mean, there is the well-publicized case of the Liquor Control Board of Ontario. On the face of it, even a grade 8 student would say that should not have happened.

Mr Velshi: The second question here is this. Again, just before you came here, the Canadian Jewish Congress was here and talked about the white supremacist rally that was held. Of course, they were upset and so was everybody else in this country, I think. I am not too sure. I was not allowed to ask the question of them, so I am going to ask it of you, and I think I can probably expect to hear the same response. Who would you think is worse, the white supremacist groups who are the avowed, erect, manly and courageous foe

or the person who discriminates at management level doing that every day, not coming out; the hypocritical, friendly type of person? Whom do we really fight against here?

Mr Dharmalingam: Do you want a philosophical or a practical answer to that? Mr Velshi, I think, when I lived in the United States and I studied there, I knew very clearly that when I went to the South they would discriminate against me. I knew how to deal with them. When I came back to the North, I did not know how to deal with people. In the name of liberalism, we do a lot of "subtleties," and that is what you are talking about. Sometimes, if given the choice, I would be more afraid of these guys who are discriminating right within the system; the other guy, I know how I can deal with him.

Mrs Marland: First of all, gentlemen, let me say that I agree totally with your comments about prevention: that is going to be the only solution in this whole area.

I want to ask you, you are referring to the review committee. I am assuming that is the Amin-Gordon report, the interministerial review of the ministry. Is that right?

Mr Nambiar: Yes.

Mrs Marland: I do not want to debate the merits of Mr Anand, because I do not know Mr Anand, but would you agree that someone who is paid \$90,000 a year to be the boss, the chief commissioner in other words, has to be responsible for his staff?

Mr Nambiar: I am a little hesitant, because I have discussed the issues with Mr Anand, so I do not want to be his mouthpiece here.

Mrs Marland: You do not want to be what?

Mr Nambiar: I do not want to be his mouthpiece here.

Mrs Marland: No, no. I am just asking, not Mr Anand. Anybody—

Mr Nambiar: In principle, you are right. The head of the organization has to bear the responsibility for anything that goes on in his organization, and if he has not established a system by which he is informed, then to that extent he has to be faulted.

Mrs Marland: You said something very serious. You said that the past commissioner, Mr Anand, fell victim to innuendo. In fairness to other people who fell victim to a number of things in what has happened in the last 12 months in the Ontario Human Rights Commission, I want to draw your attention to the review committee's report, where it says that there were instances of irregular hiring practices.

It also says that there were two female visible minority candidates who were identified by the screening officer as being qualified, but were not interviewed. It also says another visible minority candidate who was a regional manager within the commission was interviewed, but subsequently the commission went to significant lengths to retain him on staff after he had another job outside the Ontario public service and tendered his resignation from another job, but this man still did not get the job that he was applying for. Is it not of a concern to you that we have known examples—not

innuendos—we have known examples of visible-minority, eligible people who did not get those jobs this past year or last year at the Ontario Human Rights Commission?

Mr Nambiar: Yes, we are very concerned about that. I entirely agree with you that those are areas where the human rights commission has not done what it wants outsiders to do, others to do. We entirely agree with you.

Mrs Marland: It is the human rights commission's mandate, is it not, to enforce the best hiring practices around this province?

Mr Nambiar: To set an example.

Mrs Marland: They were not doing it themselves. Can you then explain to me how Mr Anand fell victim to innuendo? I want to know what you meant by that statement?

Mr Nambiar: The innuendo is about his relationship to some of the candidates who were given jobs.

Mrs Marland: Which candidates?

Mr Nambiar: There is someone who was mentioned as being his legal client when he was somewhere in—and that is not even a half-truth.

Mrs Marland: Who is that person you are referring to?

Mr Nambiar: I do not have the name here, but I can certainly—yes, I think his name was Marty Schreiter. He was the director of compliance.

The Chairman: Mr Nixon has a supplementary.

Mrs Marland: Excuse me, I have not finished, Mr Chairman.

The Chairman: Mr Nixon has a supplementary.

Mr J. B. Nixon: I have a supplementary on that point, Mrs Marland. Do you have any personal knowledge—in other words, did anyone say anything to you directly? Did Mr Anand say anything to you? Did Mr Schreiter say anything to you?

Mr Nambiar: No.

Mr J. B. Nixon: So this was based on information that you discovered—

Mr Nambiar: Got from Mr Anand.

Mr J. B. Nixon: —in a newspaper?

Mr Nambiar: In the newspaper reports I saw how it was played up. Then I talked to Mr Anand and he told me, "No, there was no connection at all between them. There was no client relationship." I can only say what I heard. You asked me and I am telling you about the innuendo. This was played up. Nobody bothered to ask him, he said. The newspapers did not bother to ask him.

Mrs Marland: To ask him what?

Mr Nambiar: Whether there was any legal client relationship between

Mr Anand and this gentleman.

Mrs Marland: The review committee that you referred to identified very serious problems not only in hiring practices but in financial areas, apart from the fact that they had no employment equity plan, but it also identified that "disposition of additional moneys did not fully substantiate the commission's public statements." Are you saying that the innuendo to which Mr Anand fell victim is not one of the problems that were identified in this report?

Mr Nambiar: Can I ask you a question? If the two directors who were involved there, if a review committee went and looked into their ministry, do you think the findings would be very different? I can tell you that they would not be. That is why I am not stressing the report too much. I am looking at Mr Anand's performance on the whole, during the time he was there. It is true. I am not condoning this part of it. But to take that a step further, I suppose what you are saying is that the head of the organization has to bear responsibility for this. Ultimately it has to go higher and higher.

Mrs Marland: Are you saying that the problems identified in this report can be found in other ministries?

Mr Nambiar: Yes, that is exactly what I am saying. That is the thrust of my brief, that this would be there in other places as well.

Mrs Marland: Do you not have a concern that this, however, is not a ministry? This is the Ontario Human Rights Commission, which is responsible for enforcing hiring practices in every employment sector, public or private.

Mr Nambiar: Very true, but the people who have been taken in there, by secondment and so on, they bring their culture from where they come. If you took me from outside, I would take my culture there and then say, "Hey, this is not what I think you should be doing." Then we would have a dialogue, but that is not what—you lay great stress on this report. They are talking about continuing the practice by secondment and service contracts from other ministries. How are we going to see new blood and new ideas?

Mr Philip: Do I take it that the thrust of what you are saying is that the former chief commissioner started a number of initiatives which you approve of and that he should be congratulated for those initiatives?

Mr Nambiar: Yes.

Mr Philip: At the same time, there were some unfortunate processes which were not working and which subsequent studies have documented, and you are not disagreeing with the findings of those processes, but there were some good things that came out of that particular appointment and that particular chief commissioner. Perhaps we should look at some of the good things he did as well as some of the unfortunate events. I think that is all I hear from the evidence before us and nothing more than that. Is that a correct summary of what you are saying?

Mr Nambiar: Yes.

Mr J. B. Nixon: I hear you going a little further. I hear you confirming what the report said when it said:

"We were impressed by the openness, clarity, and sometimes passion, with which the chief commissioner spoke.

"From these contacts with the chief commissioner, it is our opinion, that he is a person of honesty and integrity who is deeply committed to human rights, to the Ontario Human Rights Commission and its new directions. Nothing we discovered in our review has given us cause to question this perception."

I take it that is your perception.

Mr Nambiar: Yes.

The Chairman: Thank you for appearing before us today.

Mr Dharmalingam: May I make a comment before I leave? I think one of the questions we are raising here—and I am posing this to you—is that unless the politicians who are here understand the role of the Ontario Human Rights Commission, which we are having some trouble with, all of us; unless you understand that you are not in a position to hire the kind of people who are going to deliver the message for you and while you are looking for a miracle worker to patch up all things, that will not happen.

My submission is, after listening to all this I would hope you will take a very serious role and decide where you want this human rights commission to go. Second, give the kind of resources to make it happen. Then the public will support you on all these things. Otherwise, we will be coming back in another two years to talk about the same issue.

The Chairman: Thank you.

The committee recessed at 1215.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

ONTARIO HUMAN RIGHTS COMMISSION

THURSDAY 5 OCTOBER 1989

Afternoon Sitting

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Witnesses:

From the Inter-Clinic Work Group on Human Rights:

Casas, Lidia, Community Legal Worker, West Scarborough Community Legal Services

Abramowicz, Lenny, Lawyer, Neighbourhood Legal Services

Bateman, Elizabeth, Community Legal Worker, Bloor Information and Legal Services

From the Alliance for Employment Equity:

Richardson, Robert, Executive Member

Galabuzi, Grace-Edward, Co-ordinator

From the Committee for Racial Harmony in Schools:

Young, Ramona

From the Ontario Coalition of Black Trade Unionists:

Bobb, Yvonne, President

Wharton, Sinclair, Secretary

Individual Presentations:

Permaul, Grace

Leeson, Elizabeth A.

Johnson, Ken

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday 5 October 1989

The committee resumed at 1405 in room 151.

ONTARIO HUMAN RIGHTS COMMISSION
(continued)

The Chair: We will proceed with our deliberations on the Ontario Human Rights Commission. This afternoon we have before us the West Scarborough Community Legal Services, Lidia Casas. Who do you have with you, for the record? You may proceed with a 30-minute time allotment to your group. You may use whichever portion you want for your presentation and retain some for questions if you so desire. You may proceed.

INTER-CLINIC WORK GROUP ON HUMAN RIGHTS

Ms Casas: Thank you very much for being invited to participate in the hearings. I would like to first of all clarify that I am Lidia Casas from West Scarborough Community Legal Services, and we are here speaking on behalf of the Inter-Clinic Work Group on Human Rights, which is a group comprised and composed of community legal workers and lawyers in legal aid clinics here in Metro.

First of all, as I stated before, we are legal workers. We represent mostly disadvantaged sectors of our society, mostly women, people in the disabled community, visible and immigrant minorities. As such, we have in fact been having quite a bit of experience dealing with human rights cases, and we deal with those on a case-by-case basis.

As a result of our experience dealing with the commission on our case load, we have found that the way that the human rights commission is structured, the way that the legislation works, the way the legislation has been thought out has hurt and only reiterated a legitimized social and economic exclusion of the oppressed, the poor and the disadvantaged of our society. This is something that certainly has not been new to the commission. We have had a history of meeting with the human rights commission—the chief commissioner, Raj Anand—and where we have expressed our concerns and our problems with the commission, whether they be individual cases or on questions of policy.

At the same time that we have expressed those concerns in the past, we have requested some action, some very specific things to be dealt with. We have met with nonaction and it has been that we have become completely frustrated the way the commission is functioning. We also have unfortunately come to the conclusion, from the legal point of view, that the commission is a nonviable legal option for many people, and in fact for most Ontarians. I think that we are going to try to come up with or explain how we view that this has become a nonviable legal option. We are not here to say who to point the finger to, but we are here to talk about the big issue, how the commission does not work. It does not work just because of one person, but it does not work because of its structure, the way that has been thought out to be.

I am here with Elizabeth Bateman from Bloor Information and Legal

Services—she is a community legal worker—and Lenny Abramowicz, a lawyer with Neighbourhood Legal Services. Both of them are going to explain to you in further details our position on this matter.

Mr Abramowicz: I would like to reiterate the point that Lidia was making towards the end of her presentation; that is, that we want to make it clear that from our point of view, from the point of view of legal workers who have been dealing with the commission over the years, the problems that exist, and they are significant problems, are not problems that can be identified by pointing at one individual or one little part of the structure. Rather, as far as we are concerned, the basic failure of the commission is more an entire structural and philosophical problem that will not and cannot be rectified by finger-pointing or finding one scapegoat to lay the blame upon.

We have been distressed somewhat by the news reports coming out of this committee's hearings and news reports going on for the last little while that have seemed to spend more time dealing with the individuals. We all know that news tends to be like that, but we are hoping that the committee takes seriously its mandate in dealing more with how we will fix the thing for the future rather than finger-pointing at individuals who may or may not have contributed to the problem. Our major point is that there are structural and philosophical problems here with the commission that have to be addressed and that are serious, that must be addressed and that this cannot be rectified by just shifting of individuals or blaming one individual or another.

As Ms Casas pointed out, at this point we consider cases before the Ontario human Rights Commission to be a nonviable legal option. We could spend a lot of time on, and I could personally regale you with, the stories about all the files I have in my office of people we are representing before the commission, for whom I have been waiting one and a half, two and a half and three years. That is the top number of years for me; I know of other legal workers who have files that are six years old.

This is not a way to deal with human rights in this province. It is at this point becoming just, as we state, a nonviable legal option for us to be presenting to clients when they come in our door. The frank and honest truth is that we have, to some extent, stopped referring people to the OHRC when any other option is open to us; we look for the other option. Whether referring the person or handling the case ourselves, that is what we have started to do. Our experience is that we do not get any kind of satisfaction in the vast majority of situations, or it takes so long that the client usually has gone on somewhere else or does not really care four or five years down the road what the solution is with one or two minor exceptions, which tend to be the more publicized types of cases. But for the vast majority it is a nonstarter.

We think our first response to this problem—and as we said, this is a structural and philosophical problem—lies with the government of this province. Certainly over the last few years we have seen a disturbing trend since the creation of the commission and think that the government has tended to state, "We have a commission, we have a Human Rights Code and we've done our bit for human rights in the province of Ontario." With a few notable exceptions, that is all the government has done. It thinks that the human rights commission can deal with all human rights abuses in this province, and we think that type of attitude is part of what is allowing the commission now to drown partly in its own successes. I think you will hear statistics from other groups, and probably from the commission itself, in terms of the literally thousands of cases that come to it every year. They cannot handle these individual cases on a case-by-case basis.

We think that the problem is that the government is neglecting its role in this area. The government should take a more proactive role in the area of human rights. Its role in human rights did not end when it passed the Human Rights Code. It should be sensitive to areas of human rights abuses that are going on today and identify them, perhaps working in conjunction with the commissioner in response to the commission initiatives or in response to the initiatives of the larger community, and pass legislation in those areas to deal with problems that are presented to it, partly of course to deal with the situation and partly also to get certain problems off the back of the commission.

A perfect example, and one where the government in fact as stepped into this breach, is the pay equity legislation. This was an area for which, historically, people would go to the commission and just create scores and scores of individual complaints, if in fact it could be argued that they were human rights complaints. With pay equity legislation the government is taking some of the responsibility off the back of the commission, but this is just one example. I do not even want to go into a great deal of depth into whether or not the pay equity legislation will be a positive example, but we are just saying that this is the way the government should be approaching it; if there are identified areas of human rights concerns it should take a proactive role, go in there and create legislation dealing with the specific area or simply amend existing legislation.

I believe you will have a submission coming later on, or perhaps you have had it already, from the Advocacy Resource Centre for the Handicapped dealing with the issue of absenteeism within the workplace. They have been suggesting for quite a long time that this problem can be rectified by amendments to the employment standards legislation instead of allowing individual cases to continue to flood into the human rights commission. I think they will point out that the largest number of cases in front of the human rights commission are cases dealing with disability issues, and the largest number of those cases are absenteeism cases. The government should understand that there is a problem there and should deal with it in a different manner rather than leaving it up to each individual claimant's having to go to the commission and trying to argue out his or her case. It does not work and it creates the logjam that we have now.

So our clear message here is, the government has to change its philosophy and has to take a more proactive approach to the issue of human rights. Do not just sit back and say: "Well, we have a commission there. Let it deal with 40,000, 50,000 or 80,000 individual cases as they are coming in." That is a prescription for failure, and we see the failures that it creates.

Our second answer to the problem is to fundamentally change and alter the structures of the Ontario Human Rights Commission itself. As Ms Casas pointed out, we are not going to sit here and deal with the individual little points that we can have changed in the commission. We have come and spoken to chief commissioners on a number of occasions with respect to individual little problems that could be rectified, and to tell you the honest truth, we are tired of doing that. What we are talking about now is that for the commission to become a viable legal option, which is what we want it to be, there has to be fundamental structural change.

One suggestion that we referred to in our brief is that the commission should relook and seriously consider dropping its role as a mediating force in the area of human rights. It is our opinion that the role of mediation is perhaps not a role that is usefully performed by the commission. We think that

this is simply a time-consuming and wasteful role for the commission to perform. It might have a more useful function if it simply took a straight adjudicative function with respect to human rights complaints; that is, structure itself more along the lines of the small claims court or landlord and tenant courts, where you have a clearly defined area, where you have clearly defined time constraints and time limits which you have to operate with and where you adjudicate. You do not sit there and, in an airy-fairy way, try to make nice of human rights. Human rights are basically adversarial issues, and by sitting there and trying to act as a mediator, the commission is, we think, cheapening its function out there as a protector of the Human Rights Code. As well, it is just creating and contributing to this incredible backlog and incredible waste of time.

I will turn the presentation over to Ms Bateman now.

Ms Bateman: I think one of the other key areas of concern in the current formation of the commission, and it was a concern that has been articulated as well in the Coopers and Lybrand report of 1987—I believe it was also a concern that was pointed out in 1985—is the relationship of the human rights commission to the government.

We do not believe that the human rights commission can be viewed as a realistic place to take human rights issues as long as it is in the relationship to government that it is in. The human rights commission is not independent of government, and as such, we question its capacity to even investigate discrimination within the government. The government is one of the largest employers in the province. It is also one of the major, if not the only, provider of socially assisted housing.

Given the nature of the relationship between the human rights commission and the government, we really hesitate to refer people to the commission if their complaint is related in any way to a government body. The potential for political interference limits the possibility of fair assessment in cases, and indeed we feel the way the commission is currently structured is almost a reflection of—I mean, as a bureaucracy, it reflects some of the structures of government.

We have major concerns about the commission's inaccessibility to people with literacy difficulties, to people without tremendous personal or legal resources. Again, these are features that have a profound impact on how we view the commission's accessibility to people with human rights concerns.

Further to that, we certainly want to encourage the development within a new structure for the commission of a well-staffed, well-developed systemic unit. Again, this is a recommendation that has been floating around in various reports for many years, and the fact that there is a director assigned to the systemic unit with no staff seems to be a slap in the face to the intention to have systemic discrimination dealt with in Ontario. Again, I cannot emphasize strongly enough that we do not think it is one person's fault, we think the intention and the commitment and the will of the government has to be behind fighting discrimination and human rights abuses, and you do not show that intention by lack of staffing.

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We also feel that the commission, in some new structure, would need well-staffed and well-funded policy, public education, research and legal components to the commission, but we feel even more deeply that it is

extremely important that the philosophical premise of the human rights commission be expanded. We know that as well as our provincial code, our province is bound to the obligations of both the Universal Declaration of Human Rights and the social covenant on economic, social and cultural rights. We feel that the philosophical understanding and premises of the commission have to reflect these obligations, as well as our own code. In doing that, we feel, the commission will be much more effective in dealing with what are the contents of human rights complaints today.

There has been a classic split and dichotomy in the understanding of human rights between civil and political rights and social and economic rights. We suggest that any functioning commission in Ontario has to begin to bring the balance of rights into the practice and application of the legislation. We feel that the hearing of social and economic rights complainants will begin, just at a hearing level, to have an impact on the understanding and the addressing of systemic discrimination.

Further to this, we really would like to encourage the commission in its new formation and new structure. I cannot go back to what my colleague Lenny said, but I really feel that we do not want to feel that we are just talking to a committee that is going to talk about the past. You have the mandate here to come out with strong recommendations for a new future for human rights in Ontario and I certainly hope you do that.

I think the only other point that I want to make at this stage in the game is that social and economic rights will allow claimants who are homeless, for example, to go to the commission. You know it is very hard when you are having to take a specific respondent to the commission to deal with the overall social structure, but somebody who is homeless and without property and without a place to define their location from has as much right to be viewed as a victim of a human rights abuse as somebody who can name the respondent landlord. I think the kind of philosophical approach that would include an understanding of our obligations in the international documents and in the social covenants would allow for that voice to be heard. I am going to pass it on to you, Lenny, for the summation.

Mr. Abramowicz: In brief summary, because we would like to leave you time to question us on anything that you find you need more information on, all I would like to say is that we came to this committee with mixed feelings and really—not trying to make it too dramatic—with heavy hearts.

We are coming here stating that, from our perspective, as the advocates of people with human rights complaints, it is our opinion that the commission is now a nonviable legal option. In fact, there are some people within our own group, and certainly people in the constituencies, the communities we deal with, who believe that at this point the human rights commission does more to harm the advancement of human rights in this province than to help them, because it simply now acts as a morass, as a bottomless pit into which complaints fall and never arise. All you have to do is look at the Coopers and Lybrand report and realize that nothing has improved since then, that the number of complaints and the backlogs have increased.

In fact, without looking at those hard numbers, I can tell you the personal perspectives of my clients; uniquely, all of them. Every single one calls me on a monthly or bimonthly basis to say, "What is happening?" Most of them just lose the interest as the months and the years tick by. You can see the people who come in who are initially concerned about their human rights being trampled on out there, by a landlord, by an employer, by whomever, just losing the interest in it as time goes along.

If you wanted to create a structure that is effective in dissipating people's anger and dissipating people's concern with human rights, well, at this point that is what you have. You have a body that is not doing its job and in fact, according to the opinions of some of the people in our group and certainly many of our clients, is doing more harm than good out there with respect to human rights issues in Ontario.

Therefore, again, we are troubled to say that we are not sure. If provided with the option of having a human rights commission today or not having one, we cannot come out with a clear statement and say it is better to have one. The way things stand now, perhaps it is better not to have one.

We are not suggesting that as our solution. We think some of the things we have pointed to in our brief and are stated in our recommendations will change the situation. We believe there is a need for the Ontario government to respond to human rights concerns and I do not want to give anyone the message that we are saying that human rights are not a serious issue and should not be dealt with in a code or in a piece of legislation or by a commission; all we are saying is that as it is presently constituted, it ain't working.

The Chair: We have about two minutes for each party for questions.

Mr Philip: A recurring theme with a number of people deals with the last point you were making; namely, the length of time it takes and the fact that people eventually get discouraged and go away. Would your recommendation 3 have an impact on that problem, and if so, how, or would you elaborate, or do you have other recommendations other than simply adding more staff?

Mr Abramowicz: This really refers back to a point I was making that we think the model that exists now in the commission is simply unworkable. Right now the commission takes every single case that walks in the door, basically. I know we can quibble about that, but essentially there are scores, volumes of cases that come in and the commission tries to handle every one. Different officers deal in different ways, but basically many of them try to mediate, try to solve the problem.

We are saying that perhaps this is not an effective role for the commission to be taking and it should be simply taking a more adjudicative role and acting more as a tribunal in the way the small claims court or landlord and tenant court would act, with specific time limits and stating: "We will listen to the complaint. We'll get the two parties together and we'll give a decision and we'll do it within a proper time frame."

As well, tied in with this and referred to in our brief is the fact that we believe it might be time for the commission to look seriously at some form of screening process: not dealing in a large manner with every single case that comes in but perhaps in some way screening out the viable cases from the ones that are perhaps less within its mandate.

We are very cognizant when we are stating that that we do not want to give the commission an unchecked discretionary role here to decide what is a human rights complaint and what is not, but we think it is possible to create a structure that allows for a bit of a filtering and yet a check on that to allow for appeals perhaps, or to allow for some kind of way of reviewing the discretion, but making sure that the important cases make their way to a truly adjudicative body.

Mr Philip: It has that power under the present act. Are you saying it is not using it?

Mr Abramowicz: It has that power. The problem is that there are so many cases that are coming in and are not being filtered out and there are so many cases that just get lost in a mediation type of mode that they are not going anywhere. Whether it is simply because of the numbers that are coming in and the lack of resources—personally, I do not believe that. I do not believe the only answer is just throwing resources at the commission. Of course, that would not hurt they were well placed, but I think that you have to look at the structure.

Mr J. B. Nixon: Following up on the question Mr Philip had, if you go to an adjudicative model, it obviously has some real benefits today.

I would like to say thank you for your thoughtful presentation. There are some good, intelligent comments there, although I may disagree with you on some.

In an adjudicative situation, obviously that works well for some people. Certainly it is something that lawyers and paralegals are comfortable with, much more comfortable with in most cases than a mediation system, because it is so loosey-goosey. There are other people, particularly those who may be acting on their own, who will not find that model an attractive alternative. Would you not agree with that, or do you have some comments?

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Ms Casas: I would just like to say, first of all, that already in the small claims court you will find a large number of people unrepresented. The way it works is that basically a complainant is—

Mr J. B. Nixon: I understand how small claims court works.

Ms Casas: I know, but the whole issue is the way the commission is working. A lot of people are going to complain, unrepresented, and where you have the complainant sometimes trying to find out in fact who is helping—

Mr J. B. Nixon: Let me tell you, I used to work in a legal clinic and a lot of people would tell me: "I'm not going to small claims court. I don't understand it unless you go with me." You get the same rejection of that adjudicative model.

Mr Abramowicz: We are finding that the model that exists now is not providing the buffer that you are referring to. I understand that many people feel uncomfortable in terms of going unrepresented. The reality is that there are not enough legal clinics out there to represent everybody who has a human rights complaint.

What I am stating is that it is possible to create a user-friendly type of system—I guess that would be the term these days—but not one that bogs the complaint down in a system where the commission tries to take on that mediation type of role. The reality, we think, is that when you try to mediate, what ends up happening is that (a) it gets stuck in a morass; and (b) the person tends to end up having his or her concerns deflected.

Part of the response could be that you create a structure that has advocates, maybe advocates inside of it and maybe advocates outside of it. Give the legal clinics more staff. As Ms Bateman mentions, duty counsel operating out of the commission might be an idea.

I agree. I will certainly argue in favour of a user-friendly system and I share your concerns, for example, about the landlord and tenant procedure and small claims court that way.

Miss Roberts: You have suggested that the government take a more active role in human rights. One reason your adjudicative model might have problems is that you are expecting them to make judgements where there is not a basic law that is there. There is a human rights code, there are very good principles that are there, but there is not a basic law so that you can point to this particular statute or that particular statute. What you are asking the adjudicator to do is something that would be a little bit more difficult than small claims court. They would have to be a very specialized group of people—extremely specialized.

I do not require a comment back, but all I am telling you is that although the model is perhaps an appropriate one, you are going to have a lot of problems with it. It is something that could be worked through. I think you have made it very clear that you are not concerned about whose fault it is or what is going on if the system or the structure we have is just not working. Would you be prepared to go along and help us change or look into the changing of that structure and to develop maybe another model, whether it is directly with the commission or with the House itself?

Ms Bateman: One thing that was very clear in the drafting of this submission to you, given that I am the drafter with input, was that we did not want to get into the fine-tuned details of how to adapt the model in those exact ways that you are raising concerns about, partly because we do not think that is our work. It is not that we would not want to dialogue about it, but clearly there are aspects to the model adaptation that would require permanent boards of inquiry—a permanent board or a number of boards that sit continually.

Yes, I would agree with you that the adjudicating function requires a level of expertise in human rights, but there is a body of human rights case law to refer to. This is why, again, the functioning of a well-staffed research and legal component to the commission would be a resource to these adjudicators, who could certainly access input on decisions.

Ultimately, we are saying what exists does not work. We are offering what we hope are at least some practical and concrete suggestions in heading into a new structure. There is fine-tuning to be done. All the issues that you are raising have to be worked out. Again, I would hope that your committee might take the time and use your resources to come up with—

Miss Roberts: But it is not our particular mandate to work out the fine-tuning either.

Ms Bateman: But it is to deal with the structure and mandate of the commission.

Miss Roberts: On a very general level.

The Chairman: Thank you. We have run out of time, but, Mrs Marland, I would allow you one question.

Mrs Marland: I would hope the same as the government, Mr Chairman.

The Chairman: It would be five of them and six of them and one of you.

Mrs Marland: To Ms Casas and Ms Bateman and Mr Abramowicz, are the three of your lawyers? I am just trying to get a background.

Mr Abramowicz: I am a lawyer.

Ms Bateman: I am a community legal worker.

Ms Casas: I am also a community legal worker.

Mrs Marland: It is important, because you are the first people who have come to us who are actually working with the code in your profession. That is why I think the very last sentence in your brief is so significant, where you say, "Thus, if changes to the commission are not immediately forthcoming, we are left with no alternative but to recommend the commission be abolished."

I think it is also very significant that you said there is the potential for political interference.

What I wanted to ask you is, when you say we should not be pointing the finger or blaming any one individual or another and we must look at how to fix things for the future, would you agree that we have to hear from people like you who are working with it on the outside but that we also have to hear from people who have been working with it on the inside?

Ms Bateman: Absolutely. The one thing that we did not emphasize here because of where we sit in location to the commission, but I hope that it is understood and I would like to put it on record, is that we believe that there are very competent and committed people inside the commission. We do not want to get into this kind of scapegoating of who or what. In that sense, I think that there are resources inside the commission that are not being used well.

Mrs Marland: Who we should be hearing from?

Ms Bateman: Absolutely.

Mr Abramowicz: I agree we should be hearing from them. I think it is necessary, though, to point out that we would like them to be heard from only within the mandate of looking at changing the thing to make it work for the future as opposed to specifically sitting and deciding what the problems were and finger-pointing in the past. If we are talking about listening to people so that they can offer suggestions as to how the thing will work, we are in full agreement.

Mrs Marland: To find out how it will work we have to know how it has been working.

Mr Abramowicz: I think we know there are problems.

Ms Bateman: I think the Coopers and Lybrand review on the hiring practices, those reports, are there. That information is there.

The Chairman: Thank you for attending before the committee. Our next group is the Alliance for Employment Equity, if you would like to take the chairs up at the front, please. Introduce yourselves, please, and you have 30 minutes to make a presentation and questions. That is the total time allotted. You may proceed.

ALLIANCE FOR EMPLOYMENT EQUITY

Mr Richardson: Hello. My name is Robert Richardson and I am an executive member of the Alliance for Employment Equity.

Mr Galabuzi: I am Grace-Edward Galabuzi. I am the co-ordinator of the Alliance for Employment Equity and I will be making the presentation.

The Alliance for Employment Equity is a coalition of over 50 community and advocacy groups from the disabled peoples', native peoples', women's and visible minority communities advocating for mandatory employment equity legislation. We welcome this opportunity to participate in what we hope is the beginning of a process that will lead to a new approach to dealing with violations of human rights in the workplace, in the provision of services and in all other areas that affect our lives each day.

We, like many others, believe that the Ontario Human Rights Commission, because of its vital role as a defender of human rights in our society, and in many cases that of last resort, requires such reviews periodically as a means of maintaining its accountability to the society, and most important, to those most vulnerable to the abuse of their human rights. Such reviews allow for timely, critical and objective assessment of the approach and tools being used to guarantee our rights, providing for new ideas as the voices of both the human rights practitioners and the victims of discrimination are heard as to what works and what does not.

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Having said all that, and well knowing that the human rights commission could use a shot of credibility, given the community's attitude towards the commission as a place to go for justice in a timely fashion, it is disappointing to see that a more public forum of inquiry was not chosen over this, and that some of us had to find the advertisement among the obituaries in the Toronto Star. Whatever the message behind that gesture, there is one thing we do not think it is: It is not a rolling out of a welcome mat for people to come and participate in this process. In other words, we are not here because you reached out, which we think you desperately need; we are here because we worked overtime to find out about what you were doing.

Many of the problems of the Ontario Human Rights Commission's challenging mandate are well known. Some stem from the commission's code itself, the limited powers invested in it by the Legislature being one problem. Others stem from the way the practitioners have chosen to interpret even these limited powers, with the effect being a further divestment of the commission's capacity to deal with discrimination than had been hoped for by those who fought long and hard to get the commission and the code.

Others still can be traced to the funding levels, which are so low that surely no one can reasonably expect them to meet the needs of the commission. This then creates the inevitability of backlogs, of commission employees dismissing many cases as unable to be substantiated or simply sending would-be complainants back to, for instance, employer-run procedures. Whatever they are, they are exacerbated by the individual complaints approach to the defence of our human rights.

The Ontario Human Rights Commission must change its approach towards enforcing human rights. It must now establish a threshold of acceptable

behaviour and then require that in the areas where possible, like employment, transportation and housing, the actions of, say, employers or service providers meet the standards or face stiff penalties. It is time that people's human rights became as important as or more important than people's property. After all, for some of us, we have one and not the other.

The commission cannot do this on its own or with the code as it is. The commission therefore needs to become more independent, or independent enough, reporting to the Legislature, as opposed to a single minister, so that it can advocate for mandatory employment equity legislation, a building code that requires reasonable accommodation for people with disabilities, transportation systems that are accessible to Ontario's entire citizenry, and other such measures. If it can be done for the environment and for health and safety, we believe it can be done for human rights.

What this does, in essence, is make the violation of an individual's human rights a violation against society and lift the burden of the poor would-be complainant, who is more often than not scared to death of initiating action against someone in a position of power over him as his employer or service provider. This, we know, requires political will on the part of those in power to make the necessary legislative amendments. We hope this process will lead to precisely that.

In the meantime, the Alliance for Employment Equity believes that the Ontario Human Rights Commission should be a strong, high-profile advocate for mandatory employment equity legislation. Such legislation will have the effect, with the commission's present individual complaints approach, of substantially lessening the burden of complaints the commission deals with. Perhaps then the levels of funding that are appropriate for the commission will start to approximate the task at hand. The Ontario Human Rights Commission should recognize its limitations and join the target group communities in calling for an independent, separate agency to administer and enforce such employment equity legislation.

The commission should add its voice to those calling for a nondiscriminatory clause in the provincial government's collective agreement with its employees, the Ontario Public Service Employees Union.

The commission should also provide leadership within government by pushing for progress on the question of human rights in government employment and government services.

The Ontario Human Rights Commission needs desperately to re-establish its diminished moral authority by defining its role as more advocacy oriented, more proactive, more independent, more sensitive and more receptive to input and criticism from the community. An important first step in this re-establishment of community confidence should be the implementation by the commission itself of an employment equity program. This relates to comments about the Ministry of Citizenship review report that I will return to in a short while.

The commission must be willing to define its independence and proactive approach by taking the provincial government to task about its employment equity program, which we have not heard of since its headline-catching proclamation two years ago. It should do it by requiring the Toronto Transit Commission to accommodate people with disabilities and by requiring school boards to accommodate the disabled and to implement employment equity. A lot of such high-profile cases will demand the commission's will to act more than

it will demand its resources.

In closing, a word about the executive-level hiring dilemma at the commission recently and the subsequent Ministry of Citizenship review: It is almost cynical that the report in question only addresses the status of the visible minority applicants to the seven senior positions staffed last year. How about the people with disabilities? What about the native people? Might all this have something to do with the fact that this target group, the visible minority group, was the commission's loudest critic, and hence the ministry's action to diffuse the criticism? Perhaps because of the initial intentions of the review, a reliable audit and analysis of the staffing process was not undertaken. Instead, what we got were assurances that there was "no evidence of discrimination," even as the aspects of the report show that there clearly was or as corporate staffing policies that had the effect of keeping members of three of the four target groups out of positions staffed were reaffirmed.

This is the kind of systemic discrimination the Ontario Human Rights Commission's new systemic unit should concern itself with, a process that by its informality, its insistence on legal proficiency where not required and its lack of documentation of the evaluation process works to ensure that the status quo is its product.

Aside from the lack of accountability, this process engenders the report's own admission that the hiring might have looked different and only goes to show that its conclusion of no wrongdoing, no discrimination, etc., was a glib, predetermined outcome that was predicated not on the evidence but on the political intentions of the review. On a final note to this, one wonders why the position of director of legal services was not advertised in *Share* or *Contrast*, two well-known visible minority community newspapers, as the other positions were, but only advertised in the *Toronto Star* and the *Globe and Mail*, which also carried the other ads.

Finally, the Ontario Human Rights Commission must develop a process by which it gets feedback from complainants and input from the community, as well as recognize the expertise and the role of others involved in the struggle to ensure full citizenship for all Ontarians.

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Because our mandate is not broad enough to deal with all the other issues of concern to us as citizens regarding the commission, we would like to support the deputations of the Urban Alliance on Race Relations and the Coalition of Visible Minority Women, which are our member groups.

Mr. Curling: Your report is quite direct and you have addressed certain areas that were not raised as often in here. You talk about the disabled and native people. The first question I would like to raise is, it seems to me that people hinted at the fact that not enough time was given so that one could make a proper presentation here, so a presentation may lack the completeness that is expected. Do you think there could be an improvement in this; in other words, a longer time? And how do you see us doing that, to give you more time to make a presentation?

Mr. Galabuzi: I think there could have been an improvement in how you approached the whole thing. I think you could have reached out to community groups and asked them to make presentations. Up and beyond that, I think that what you could have done, rather than have it in Queen's Park with members of

the three parties, was actually set up some sort of community task force that would look into this. That would be staffed by some people who work in the field as well as others who are in contact with complainants and, in essence, set up an environment within which people, especially complainants, would be willing to come out and talk about the problems they have had with the commission or the process that deals with their complaints. I think that would have been a substantial improvement. I think we would have got a lot more from the process than we will end up getting this way.

Mr Curling: Many of the groups that have been here have made presentations to say how the human rights commission could be improved. They have made recommendations about money, staffing and what have you. I notice in here too that you made some mention that the commission cannot do it alone. I want to take a different view.

There are many organizations out there that are very versed in and have a good understanding about human rights. There is a lot of education to be done. Do you think that the organization itself, working together collectively, could do a better job? In other words, therefore the commission and government would be able to be more effective in introducing many of the things that are so much needed, employment equity and some of the human rights atrocities we would say are happening in the workplace or housing or so on. Do you think that the organization itself could do a better job?

Mr Galabuzi: No doubt about that. We have talked about that in the presentation. We think it is important that the commission start to identify itself more with the community and work with the community where the commission's interests and the interests of the community coincide.

The argument has always been made that the commission cannot, on the one hand, almost look like an advocacy group and, on the other hand, be an impartial arbiter. I think we have got to the point where clearly, especially under Raj Anand, there was an attempt to do that kind of thing. I think the commission could very well do that if it were more independent than it is today; if, for instance, it reported to the Legislature, as opposed to reporting to an individual minister.

If the violation of human rights became the concern of everyone, as opposed to an individual minister, whose budget is not even clear and does not reflect—maybe it does—the weight of the concern in the community with the issue, then I think we would be able to do a lot more. I think it is crucial that it be independent and be able to work with the community. It cannot work with the community unless the community sees it to be independent and at arm's length from the government.

Mr Curling: My last question is in this respect. Many times we feel that if we fund a ministry, an organization or a commission sufficiently, it will be able to solve the problem. In the meantime, the issue is wide. It is not a ministry problem; it is a society problem. In other words, discrimination may arise in the Ministry of Citizenship. It also comes in the Ministry of Mines or in the private sector itself, so it is to be used as an advocate to sensitize the others. Many times when we approach it with money, it may swell the bureaucracy but it does not do it effectively to sensitize—and other people sit back and say: "There's enough money there. It solves it," but on the other hand, it has not done anything in the wider populace.

Mr Galabuzi: You and I know that the more important ministries have

bigger budgets than the less important ministries. Obviously, the way the government appropriates its money reflects its priorities. I think it is important that the commission get more resources so that it can deal with the backlog and all the other things it really ought to take on—its new mandate.

I am arguing here that the violation of human rights ought to be the concern of the whole of society and not that of a single ministry. The commission should report to the Legislature, as opposed to reporting to a single minister. If that shift were made, that would reflect the prioritization of that concern by the government.

Mr Breaugh: It is good thing we did not give you much more time; you would have had this thing solved by now. I am impressed with some of the notions that have been brought forward by a number of groups here. Pick, if you can, the single most important thing that needs to be done to the human rights commission. Is it the independence that is the most important thing?

Mr Galabuzi: Is it independence which is the single most important thing? The difficulty with that kind of question is, do we do this and forget about doing all the other things, or do we do this first and then do the other things?

Mr Breaugh: Yes.

Mr Galabuzi: Is that the question you are asking?

Mr Breaugh: Yes.

Mr Richardson: There is not one single most important thing.

Mr Galabuzi: Yes. There is still a difficulty with that, because clearly, the commission right now needs more resources. Independence will not come next week, but the commission could use some money next week. That is not the most important thing, and yet that is not the only thing that ought to be done. I think there are things that can be done in the short-term and things that can be done in the long term, not meaning in another 20 years; meaning in three or six months.

Mr Breaugh: I will tell you my problem. Of all the things that might be talked about or recommended from a committee like this, it is hard to come up with something that has not been tried. People say resources; they got more resources. They could not spend the money they had. More people; they could not handle that. You might say they need more staff, but we are concerned about whether they have employment equity there.

The union was in here yesterday saying that the human rights commission rejects putting that in its contract. If the Ontario Human Rights Commission does not believe in employment equity, who the hell does? If they will not put it in their contract, how do you expect General Motors or Ford to put it in theirs? If we keep hearing—and I do, but I do not know whether other members here are the same way—that a major problem here is that it does not have the independence to do what a lot of people think it ought to do; that it is a part of a ministry, just like the department of mines is part of a ministry, and that is about where it is placed. Every once in a while some decent, honest person is made commissioner and that is supposed to change the process, and it never does.

Mr Galabuzi: It cannot.

Mr Breaugh: It cannot. Somehow we have to kind of try to find the one breakthrough that will lead to other breakthroughs. It is becoming more apparent to me that perhaps independence is the first step down a long road which might actually give us a human rights commission that knows why it is in place, follows its own advice and does some good for some people. I am looking for that first step.

Mr Richardson: I think some of those things can be put in the code. Here is an example of that. Recently Catherine Frazee made a very good statement. She was saying that she was going to produce some test cases and take to task some of the people who were discriminating the worst within the society. That can be enshrined in the code. Rather than being simple policy, it can be the law that they must go out and do so much proactive work within the community.

1500

Mr Galabuzi: I think there is another thing to look at too, and I agree with you that independence is quite important. It might be the way to lead to the new approach which Robert is also talking about; that is, to set standards and set a threshold of actions below which, whether it is the employer or the service provider, he will be penalized. We do it for other things. I think we can do it for human rights. We can say that the Toronto Transit Commission, for instance, must accommodate all Ontarians. It must accommodate people with disabilities. Then the government, together with the TTC, would have to deal with the issue of how to make the TTC stations and all the vehicles accessible.

Mr Breaugh: Let me stop you there. Here is my problem on that example. The government of Ontario just built, at large public expense, an extension to the GO train in Whitby. The station is inaccessible to everybody but mountain goats. It is not a subtle thing at all.

Mr Galabuzi: Precisely.

Mr Breaugh: Now you cannot expect the government of Ontario, which blatantly ignores its own recommendations, to turn around to somebody in the private sector and say, "Well, we can forget about that, but on the other hand, you are going to have to conform to the Human Rights Code and make all of your buildings accessible."

Mr Richardson: That is why the human rights commission itself has to be at arm's length from the government and then has to be able to turn around and say: "Listen, this is systemic discrimination. This is stopping people from using a public utility. It is not allowing them full enjoyment in a so-called public society. Therefore, they have to be taken to task." The code has to have the teeth to be able to actually punish the government.

Mr Breaugh: I will tell you, its biggest client in its first year of independence will be the government of Ontario.

Mr Richardson: Indeed it will.

Mr Galabuzi: If the code is amended to allow for that kind of action directly so that it actually says that the code requires that standards are set, as opposed to having to try cases by induction and seeing if the mandate goes far enough to allow for them to try those kinds of cases, to see whether they can go after the TTC, then I think we would have gone a long way in

bridging a new approach to human rights.

I agree with you that independence might be the way to get to that new approach, but clearly the code must be amended to allow for that kind of thing because of course, as the code is today, it is not clearly specified. There are lawyers who will stretch the code to try cases like that, but it is not clearly specified, and I think government can act in that respect.

The Chairman: Do you have a supplementary?

Mrs E. J. Smith: Yes, very quickly. I just would put to the two gentlemen my thought, which is different from yours, but you might at least want to think about it. It seems to be that if the commission were responsible only to the Legislature rather than to a ministry, it would be less responsible because the critics could not stand up and hold one person responsible for answering questions and being criticized. If it were responsible only to the Legislature generally, you would be asking us to make a minister responsible.

Mr Philip: Are you suggesting that the Ombudsman is less responsible because he responds to a committee rather than to a minister?

Mrs E. J. Smith: It is something that I am suggesting they might think about. I think it is an advantage to have a minister who is responsible. It is just a thought.

But the other point I wanted to make is—I know that Mr Breaugh would have to agree; if not, then we should have some research report on it—that the commission is not under a ministry in the sense of being a part of a ministry but has, after the commissioner is appointed, a great deal of independence. The ministry appoints the commissioner, but—

Mrs Marland: All their hiring and firing, Joan, is signed by the deputy minister.

Mrs E. J. Smith: It is signed in a formal way; you do not interfere in the process. There is a difference; I make that distinction and I know that you all know there is. That would be very critically viewed if it were not so and treated so.

Mr Galabuzi: That is a compliment.

Mrs E. J. Smith: Sure, I am glad to hear you say that.

Mr Galabuzi: I certainly must agree with the member here. Obviously there are other examples of institutions that are at arm's length from the government that continue to do their job well. There are several at the federal level and I do not see why we could not possibly have it that way. There are other tools by which we can call these people to account. I think this is why we have the Ombudsman, why the Canadian Human Rights Commission is different from the OHRC and why, for instance, the commissioner for languages at the federal level is there. There are other tools by which you can call such institutions to account.

The Chairman: We have used your time but Mr Nixon had one short question.

Mr J. B. Nixon: A quick question: My observation of the Office of

the Ombudsman is not that it is as heroic an office as some members opposite might suggest to you. I think it is bogged down in red tape. I have seen cases take years to get dealt with. I have seen people walk away from cases. I have seen them so confused and bamboozled by the system that they just say, "I do not want to be part of it."

And yet it is totally independent. Mr Philip keeps telling us about its being independent and that is what makes it different and good. I would ask you—do not give me the concept—what is the practical difference going to be? I am open to being persuaded. The Office of the Ombudsman does not work, as far as I am concerned, and yet it is independent.

Mr Galabuzi: I agree that the Ombudsman clearly has enough problems. But you see, we have also talked about the need for an amendment to the accord that will empower those at the commission to do some of the things we are talking about. If you have an independence and an accord that is amended to allow for that kind of thing, that clearly states that these are the standards which must be set—set standards of behaviour or actions—and this was preferred, I do not see a commission, given those powers, sitting back and not using them. The Ombudsman does not have half or a fraction of the powers that we are talking about here.

Mr J. B. Nixon: You might agree, after some thought, that the more important thing would be to amend the code rather than grant it so-called independence.

Mr Galabuzi: That is part of it, clearly.

Mr Richardson: That is why we could not choose one most important—

Mr J. B. Nixon: Fair enough.

Mr Philip: Just by way of comment, or a supplementary to Mr Nixon's, do you see the human rights commission—the way it is set up, or indeed any branch of any ministry—having the courage to actually sue the Attorney General (Mr Scott) the way that the Ombudsman of Ontario is now doing if he did not have that kind of independence?

Mr Breaugh: Such a long lineup of people suing the Attorney General.

Mr Galabuzi: No, we do not.

The Chairman: Thank you for appearing before the committee today. Your input was well accepted.

Our next presenter is the Committee for Racial Harmony in Schools, Ms Young. Would you like to take a chair up at the front. We have allowed you 30 minutes time for your presentation. You may use all of it on your presentation or save some time for questions. However, the maximum will be 30 minutes.

COMMITTEE FOR RACIAL HARMONY IN SCHOOLS

Ms Young: Before I announce myself and make my presentation, everyone seems to be so happy and cheerful here. Maybe it is because most of these people around this table have not been the victim of this cancer, racism. For me, it takes a lot of pain to come here.

I come representing the Committee for Racial Harmony in Schools. I want

to give you a little about myself. My birth name was Ramona and I changed my name. My African name, by which I like to be called, is Monifa Owoso. I was born in New Glasgow, Nova Scotia, March 28, 1930—the Mason-Dixon line for blacks in Canada. I am a fifth generation Afro-Canadian. I have two children, the oldest a girl, 24, and a son, 22.

My ancestors came to North America. They did not come on a luxury liner but in slave ships, in chains, against their will. Although we have fought and died to remove the visible chains of slavery, institutionalized racism in Canada is blatantly evident and is keeping the invisible chains still around us. White people in Canada have yet to come to grips that Canada is a racist country. They like to believe, with their liberal white institutionalized racism, that is not true, it happens every place but here.

1510

I have travelled Canada from the west to the east and lived in the majority of Canada's major cities and I have encountered racism from all of its white immigrants. The only Canadians I have never encountered racism from are the Indian Canadians, my brothers and my sisters—the Canadian Indians, who are now dearly fighting gallantly to stop the complete genocide of their people.

To this very day and moment, as I speak, the governments of Canada—federal, provincial and civil—have constantly ignored the peaceful and passionate demands to the rightful land, stolen by bogus broken treaties, and for self-determination. It is very clear that Indians of this generation know that they are determined to demand the land back by any means necessary.

-From my birth, I have been the victim of this cancer, racism. I am a grandmother now, and the damage it has done and is presently doing daily on the lives of we blacks or African people, like myself and our children, is sometimes irreparable.

From the age of three, I can recall black families in my home, New Glasgow, Nova Scotia, having to flee from their neighbourhood when they moved into a white district, because a fiery cross was burnt on their lawn; having no black teachers, and white teachers making us read Little Black Sambo while white children giggled with the blessing of the white teacher; watching a mother coming home tired from cleaning white people's homes, feeding and taking care of their children for slave wages so white folks could achieve economic gains; fathers in the coal mines, or the steel plants if they were lucky, or taking the sons and daughters of white folks to Halifax, the capital, the seat of the government, while they picked up their bags and served them well for meagre wages. I can recall dad and mom hoping that tomorrow would be a better place for their eight children and that this would not be their fate.

Like all young children who like to go the movies, I can recall, in the home town that I grew up in, wondering why you had to sit upstairs at the movies while whites can sit anywhere and why your black neighbour was arrested with her grown son for refusing to sit upstairs until the police took them out of that downstairs theatre and not being given the answers, and when you were given the answers, because you were black, you did not understand.

All too quickly, the fate of your mother was thrust on you during high school: scrubbing floors on weekends or during your summer holidays, because when you went down to the local store—Woolworth's—you were told there were

no more openings for scrubbing. They automatically assumed that blacks would not be able to work in those stores. They must have just assumed we came down for the maids' jobs. And then we had to go and work during our summer holidays in the homes of our white teachers and of the students we sat in class with.

I can remember my brothers and my family talking about how blacks were not wanted when the war broke out and how too fast they took them and how many died there. I would take months and months to go through the list of racism, and it is much too painful, because it exists; nothing has changed. I have been coming to the Ontario Human Rights Commission since my child was five years of age, hoping, believing that the commission would make positive changes. Nineteen years later, I am taking my granddaughter and nothing has changed. In fact, the ground that we have gained has been taken away from us.

It is evident that the white middle-class lawyer, civil servant who grew up to be part and parcel of this institutionalized racism and power structure is not capable or has not the courage to deal with the racism of which blacks are daily victims.

Up to the present moment that I speak, the commission has continued to encourage racism. We, the victims, have kept the staff of the commission, the white staff, which is a majority, the lawyers and top executives, in high-paying positions while we have become more victimized. Those of us who have had to appear before the commission and dare to speak up to the commission when cases are before it are muffled or thrown out.

We also know that the hiring of token blacks or assistant whites, visible minorities, is not the answer. We also know that the toll of our African race here in Canada has ended with the breakdown of health, the breakup of families, the criminalizing of our children and the deaths of some of our family members.

It brings up the case, the very painful case, of Albert Johnson, who came to this very commission. And if this commission had been doing the things that it should, Albert Johnson could have been alive today.

The children today have watched their African parents be the last to be hired and the first to be fired, with no upward mobility.

1520

The present structure of the Ontario Human Rights Commission—and I charge it; and a lot more of us Africans and visible minorities do the same thing—has deliberately, and I repeat deliberately, not had the courage to deal with the cases of racism, and the rhetoric goes on and on.

The word of the day growing up in Canada was always "nigger." We cannot wait for white people to call us "nigger" or wait for a white person, when we are refused a home or a job, to come in, after he has been hired and we have not even a chance to get hired or to be in a home, and solve it.

I remember in Sudbury, when I was looking for an apartment, I went, and I could tell, because as you see from my experience, I know, I have had the scars of racism. No one has to call me "nigger" when I know they come from racism. I remember them telling me the place was taken. A Caucasian friend of mine said she would go and she did go and they gave her the place. We were ready to take the case before the housing authority in Sudbury when she decided, as a professional, that her family might be upset. She did not mind,

but she had some real estate with her brother and what have you, and the papers and—

Some of the solutions? The Ontario human rights structure at present should be dismantled and restructured. Racism should be found to be a criminal offence and dealt with accordingly. White lawyers, civil servants and top executives are not in a position, because of their academia, to be able to judge racism and should have the proper training.

The cases that have come before the Ontario Human Rights Commission and have been thrown out—I met a man the other day; his case has been going on for six years—should be reviewed again. There should be a hotline set up for the victims of racism. Undercover investigation of personnel should be there to investigate racism.

There is the harm of token academic or other blacks and visible minorities—and when I say "blacks," you know I mean African, because that is what we are—knowing that before hiring them the white racist power structure has been well-entrenched and that the whites in that power structure do not themselves have the courage to expose racism and question it.

No amount of hiring white or black, minority, female, in wheelchairs or disabled as criteria—and I suggest now and here, as Spike Lee's movie said, "Do the right thing," because time has run out.

The Chairman: Thank you for your presentation. It will be noted on tape. Are there any questions that any other members have? If not, we thank you very much for your presentation.

Mr Curling: I would like to make a comment. I know your presentation is quite emotional.

Ms Young: No, it is not emotional; it is a fact.

Mr Curling: Factual, and emotional too.

Ms Young: We are always accused of being emotional, we Africans, when we give the facts.

Mr Curling: I think the perspective that you brought will also be beneficial to the group here, because I know some of the historic perspective that you have brought, speaking of the Africans coming to Nova Scotia, etc, on slave ships, is something that should be looked at.

Ms Young: Just like you in the Caribbean, no difference.

Mr Curling: Exactly. I too wrestle each day with our young people who are going to jails and are being streamed.

Ms Young: Your sons and daughters too, your extended family.

Mr Curling: I want to believe that there is hope and that the presentations here—

Ms Young: You have to, do you not? You do not have a choice, you also being a victim.

Mr Curling: I just want to make two more lines, just to say that it

is believing in us and believing in the fact that you have come here and that we can assess this that will make a better place for us in Canada.

Ms Young: Well, as I said, I never saw such a cheerful bunch in my life, and they sure make up a multicultural mosaic in Canada.

Mrs Marland: Mrs Young, may I---

Ms Young: Call me Monifa. I like to be called by my African name. It means very much to me.

Mrs Marland: Yes, I am sure it does. I just wanted to tell you, from my own perspective this afternoon, that your presentation, for me, was emotional.

Ms Young: I guess it would have to be.

Mrs Marland: I want to say that I appreciate very much the effort that you have made in bringing that profound historical perspective to this committee today. I will not forget it.

Ms Young: I do not have a choice.

Mrs Marland: Thank you very much.

The Chairman: Our next presenter is the Ontario Coalition of Black Trade Unionists. The presenters are Ms Yvonne Bobb and Sinclair Wharton. Will you have a seat at the front, please? You have 30 minutes for your complete presentation. That would include any questions that may be asked, so you may want to use part of the time for your presentation and leave some time for questions. You have a total allotted time of 30 minutes. You may proceed.

ONTARIO COALITION OF BLACK TRADE UNIONISTS

Ms Bobb: My name is Yvonne Bobb, and this is Sinclair Wharton, of the Ontario Coalition of Black Trade Unionists. The Ontario Coalition of Black Trade Unionists welcomes the opportunity to appear before the committee.

The Ontario Coalition of Black Trade Unionists was formed as a result of discriminatory practices on the grounds of race experienced by black and visible minorities at their various work locations in either the private or the public sector. The coalition will confine its remarks to the prohibited ground of race under the code and the perception of the coalition that race and race relations are no longer priority issues for the commission. We want to also comment briefly on the report prepared for the Minister of Citizenship over the Raj Anand crisis.

1530

We will commence by referring to the report Life Together, a report of human rights on Ontario which was published in 1977, which identified racial discrimination as the most serious form of discrimination. In this report the commission expressed concerns that adding other grounds of discrimination without adequate resources could result in a shift in focus and a weakening of ability to address racial discrimination.

The report quoted the remarks of Galen Martin of the Kentucky Commission on Human Rights. We repeat same here for your information because we feel that

it is appropriate and not far removed from the present reality of the Ontario Human Rights Commission in Canada. Mr Martin asks:

"Is the growing list of added coverages in state and local civil rights laws diluting the fight against racial discrimination?"

"Is there a national conspiracy to undermine, weaken and dissipate state and local civil rights enforcement by loading the agencies which divert them from their original purpose of ending discrimination against racial and religious minorities?"

The same report stated that although other forms of discrimination must receive careful attention, and the commission is recommending the addition of new grounds to the code, there can be no doubt that race-related issues are central to the work of the commission and must remain a major priority in this work.

It is the coalition's perception, however, that recent events at the commission and the apparent shift in focus of the commission is demonstrated quite clearly in two areas:

1. In 1982 a systemic unit was established for people with disabilities. As well, recent amendments to the code and the development of guidelines regarding accommodation for people with disabilities indicate that discrimination on the grounds of disability is high on the commission's agenda. Seven years later, there is no systemic unit dealing with race and the commission continues to process complaints on a case-by-case basis and is buried in a backlog of complaints.

2. The race relations division of the commission has been physically removed from the commission to the Ministry of Citizenship and no one seems to be able to identify the role it plays in relation to the operations of the commission. As you are aware, the code provides for a race relations commissioner, yet without any debates or amendments by the government, there is presently no race relations commissioner, which makes us ask the question, is the commission violating the code?

The coalition wishes to be clear. We are not opposed to the elimination of discrimination on any of the prohibited grounds, as we firmly believe that no form of discrimination should be tolerated. Our references are merely to demonstrate that there has been a shift in focus at the commission.

The Ministry of Citizenship report of a review of staffing practices for senior positions within the commission: Many uncomplimentary comments could be made in this area. Anyone who has read the report and still says that there was no discrimination in the hiring process is either a stranger to the truth or perhaps does not know what discrimination is.

The report is clear with respect to the position of the director, finance and administration. The successful applicant was not the most qualified. Several visible minority candidates were identified during the screening process as having qualifications equal to or superior to those of the successful applicant but were not interviewed. If this is not discrimination, then we do not know what discrimination is.

Unfortunately, the report concluded that had an employment equity program been in place, the outcome might have been different. The coalition asks why the commission, an agency with the responsibility to uphold and

enforce the rights of individuals, needs an employment equity program to hire fairly. This clearly makes the need for mandatory employment equity programs a must.

Complaints: Finally, we would like to touch briefly on the length of time it takes to resolve a complaint. We have supported black workers in their struggle against racism in this province. We know also that it takes the patience of Job plus some more in order to bring a complaint to resolution. Whether successful or not at the commission, we believe that the human aspect has gone out of the commission. It is criminal to subject complainants to long delays while the commission tries to persuade employers to settle.

The time for a conciliatory approach is past. This government, if it is serious about promoting and enforcing the rights of individuals, must properly staff and fund the commission to the extent that it is needed to send a strong message to employers and landlords that discrimination on any grounds will not be tolerated.

We know that there have been several reviews of this agency. We know also that this review was called in response to the recent crisis at the commission. We hope that this is not merely an attempt to placate complainants but that this government will rise to the challenge of making the commission effective.

Mr Philip: You have hit on a recurring theme of the problem of backlog, the problem of waiting a long time for any kind of adjudication of complaints. I wonder if, as a trade unionist, you can tell us—one of the other tribunals of the Ministry of Labour, the Ontario Labour Relations Board, has come under similar attack for the long backlog and the time it can take to get a decision. Is this common to that ministry or is the human rights commission a more serious problem than even the Ontario Labour Relations Board in dealing with problems, in your opinion?

Mr Wharton: I think it is equivalent to comparing apples to oranges in that problems of a labour relations nature tend not to have the same significant value as is placed on problems of a racist nature in general, right across the board. When one takes someone to the human rights commission, I think it gives itself lots of time to soul-search and to think of the ramifications, the pros and cons vis-à-vis the outcome, the settlement, the equity and the society at large. When one takes a case to arbitration, it is a completely different ball game. I would say in conclusion that it is very much irrelevant to compare cases of a human rights nature to cases of a labour relations aspect.

Mr Philip: The various groups that have appeared before us have given us some recommendations as to what they think should be done in order to facilitate a speedier processing of complaints. I am wondering if you have any specific recommendations other than simply pouring more money into staff, which I suppose is a quick-fix solution that anyone can recommend. Are there any other specific structural or other types of recommendations that you could recommend that would speed up the processing of complaints?

1540

Mr Wharton: Let me start by saying I entered this room and heard Sister Monifa giving her presentation. I remember her saying that the commission should be completely overhauled. My answer to your question would be similar in nature. I think right now there is a dire need for a complete

examination of the commission itself. There are specific areas in which there is need for some overhaul. We have seen, in the not-too-distant past, an attempt made at addressing some of those ills. Unfortunately, it was short-lived.

Mr Philip: It has been suggested that perhaps more initiatives by the government in the form of legislation, as in employment equity, would remove some of the numbers of complaints. I am wondering if you agree with that and if there are specific subject areas where you feel legislation is needed through which you would eliminate the number of complainants.

Mr Wharton: If I go down the street and I see you and I punch you in the nose, I guess you can lay charges against me. Arising out of that, if you can prove beyond all doubt that I did punch you, chances are I will be fined or thrown in jail. If I should be called a name or if I am not rented an apartment or if I am not given a promotion because of the colour of my skin, it is a whole different ball game. I might take my case to the human rights commission. Out of that, the aggravation that one tends to go through, I think personally, is in itself of a nature that I would consider negative.

I will start by saying that I myself at one point in time was not granted the right to rent an apartment in this city. I proceeded to the human rights commission because I thought I had all the grounds necessary to lay a charge of discrimination against this prospective landlord. On arriving at the commission and explaining my case to the officer, I was given a package to return back home with and fill out.

I do not consider myself semiliterate or illiterate or functionally illiterate; I consider myself a reasonably intelligent individual. I will honestly say that just dealing with the forms themselves is regressive. I personally can say that the forms were so voluminous, it reminds me of a thesis that I am reading right now. This in itself has a repellent nature to people who are not very literate; hence, it has a tendency to deter people from progressing along the lines of making and filing complaints.

Maybe if this was of a simpler nature—for instance, a labour relations grievance is a very simple form. You do not have to be a university graduate to understand it or even to write up one and yet it goes a long way in resolving a problem of any particular nature in labour relations. I would conclude by saying that if racism was criminalized like most other offences, chances are it would be a hell of a deterrent.

Mr Philip: What I hear you saying, and some other groups have suggested, is that perhaps too much of the focus of the human rights commission has been on negotiating agreements or negotiating an end to a dispute between the complainant and the company or whoever and less on adjudicating whether or not there was a wrong doing.

Mr Wharton: Exactly.

Mr Philip: Thank you. One last question: There has been a feeling by some groups, a feeling which I share, that perhaps the commission would be in a better position to make proposals regarding policy, to make decisions concerning various ministries, if it were not so directly connected with one ministry or indeed with the government. Do you feel it would be better if the Ontario Human Rights Commission answered to a committee of the Legislature, as does the Ombudsman and Provincial Auditor?

Mr Wharton: Exactly. As a matter of fact, maybe I would pass on this question to my sidekick here to answer.

Ms Bobb: As a matter of fact, that was one of our suggestions. We felt the Ontario Human Rights Commission reporting to the Ministry of Citizenship showed that there was a weakening of the commission. Our suggestion was that an all-party committee be set up to which the commission would be accountable, especially as it relates to hiring practices and various other aspects, educational programs and things like that.

I want to go back a little bit on your question to my sidekick here, to put a more human aspect on the problems of the commission. There is a saying in our community that you cannot have a case with the devil and try it in hell, and most of the people I have spoken to who have gone to the commission with complaints leave frustrated in that the officers, or whoever is looking after the case, do not comprehend or understand the problems they are facing. What we are saying is that we need more education in that regard so that people feel comfortable going to the commission and do not feel further racism.

Mr Philip: Should the term of the chief commissioner be set in statute and be unretractable except for cause, presumably misconduct, the same way as you could, by an act of the Legislature, have an Ombudsman or Provincial Auditor fired for cause, embezzlement or some other very serious cause? Do you feel the chief commissioner should, by statute, be appointed for a period of five years or some other similar period of time, the way a judge or the Ombudsman or the Provincial Auditor is appointed?

Ms Bobb: Yes. I do not think the coalition would have a problem with that. But as I said, we would like to see an all-party committee that would be involved in who gets hired at the commission. We would not have a problem with the term of office. Definitely, somebody cannot run it—

Mr Philip: If he or she is always under threat. Thank you.

Mrs E. J. Smith: I would just like to ask a question about backup staff, because maybe I am missing something here. In the case of the Ombudsman or the Provincial Auditor, a committee of the government, because it hires the employees who are being complained against, has power to act. In the case of the Ontario Human Rights Commission, it is usually dealing with a third party. In this particular case we are not, but generally speaking, you are dealing with complaints about a third party. Would a committee of the Legislature have any power other than to simply say that it did not approve? I mean, what could a committee do once it heard a case? In the case of the Ombudsman, you can obviously instruct your people to satisfy the claimant, but if there is a third party, would a committee have any power?

1550

Mr McGarva: Would this committee have any power?

Mrs E. J. Smith: A committee. You have a standing committee on the Ombudsman; you have a human rights committee. But if it were making complaints against Eaton's, for instance, what power would that committee have?

Mr Philip: The role of the Ombudsman's committee, in our case, never has been to second-guess the Ombudsman on a particular adjudication, but merely to deal with the system, and in the case where there is a breakdown between the Ombudsman and a ministry, to adjudicate that breakdown.

Mrs E. J. Smith: To adjudicate. Could we adjudicate a third party? That is my question.

Mr Philip: You could adjudicate in an instance where there is a breakdown, for example, between a ministry and the—

Mrs E. J. Smith: A third party, I agree. I meant that most human rights cases are third-party cases.

Mr Philip: You could also study policy proposals and changes made by the human rights commissioner, and as in British Columbia, having been given a list of 10 finalists for the chief office, you could decide who the successful candidate would be out of the short list provided by the government. So there are a number of ways.

Mr J. B. Nixon: But I think Mrs Smith identified the gap. There are a lot of things the committee could do, but it could not go to the private sector and issue orders—after having heard a case, issue the order, "Thou shalt do this"—because a legislative committee has no power to do that constitutionally.

Mr Breagh: You mean if the act were changed to empower a legislative committee to do that, it could not do it? Why not?

Mr J. B. Nixon: I do not think it has the constitutional authority to do it. Hold on. I think only a court can do that.

Mr Breagh: Do you know what the highest court in this province is?

Mr J. B. Nixon: The highest court in this province is the Supreme Court of Canada.

Mr Breagh: No, it sits in the chamber upstairs.

Mr J. B. Nixon: There is a division of powers between the court system and the legislative system. You are going to start merging the two.

Mr Breagh: If you want to get a judge out of office in Ontario, where do you go?

Mr J. B. Nixon: You have to go to the Parliament of Canada. That is right. You cannot do it here.

Mr Breagh: Oh?

Mr J. B. Nixon: I mean, it is unfortunate. You might want to do it, but you cannot.

Mr Breagh: Can you not take a provincial court judge out of here?

Mr J. B. Nixon: Provincial, but you cannot take a district court or a Supreme Court judge.

Mrs E. J. Smith: He is an employee, but that is not a third party.

Mr J. B. Nixon: That is the problem.

Mr Breagh: Oh, I see.

Mr J. B. Nixon: I know you do not like the news, but you have to face the reality. That is the problem.

The Chairman: That concludes the presentation and the time for questions. Thank you very much for appearing before the committee. There appear to be no more questions from the members. If you have anything further to add, you may.

Ms Bobb: There is a question here I would like to ask that has troubled some of us, the fact that the human rights commission failed to agree to have a nondiscriminatory clause through the Education Relations Commission of the Ontario Public Service Employees Union. I would like to know why the human rights commission would disagree to having a nondiscrimination clause, when it is the arm for leading off in the direction that a nondiscriminatory clause should be there. I just would like to know why the commission did not agree to having a nondiscriminatory clause, a memorandum of agreement.

Mr Breaugh: That is a question we have to ask the commission when it is at these hearings.

Ms Bobb: So you do not have an answer, but you will be following up on that.

Mr Philip: Be assured we will ask that question.

Miss Roberts: The commission speaks for itself; we do not speak for the commission.

Mr Velshi: There is an arm's-length distance between us and the commission.

Mr Breaugh: No arm's length, really. I am getting confusing messages here today.

The Chairman: Do you have anything further?

Ms Bobb: Yes.

The Chairman: You have about four minutes left of your time.

Ms Bobb: No, I have six, because two minutes were taken up between members with their legal arguments, so I have two more.

We would like to let you know that we are very uncomfortable with the fact that the human rights commission is now reporting to the Ministry of Citizenship. We find that that is just a peripheral ministry. We think human rights is a very serious issue. We would like to recommend that it either be separate or come under the Ministry of Labour. That is one of our recommendations. We would like to see continued education within the human rights commission.

Mr Wharton: I have a minute that I would like to address to a report that I read which bothers me dearly, to say the least. This is a commission that was supposed to be addressing the concerns of people who have, in some cases, been harassed, denied jobs and have had their dignity trampled on. In some cases, some people have been murdered, after the fact. I must, at this point in time, ask these very pertinent questions.

This report is labelled as the Report of a Review of Recent Staffing

Practices for Senior Positions within the Ontario Human Rights Commission. I urge everyone in this room to maybe get a copy and read it. It is very interesting. One of the questions I would like to ask is whether we are truly interested in fighting and combating racism in this province when, at the same time, this same commission, at one point in time, when morale was at its very lowest, was grappling with the situation of having to replace a number of very high-profile commissioners.

Based on the content of this report, I will say that it leads me to think that some very discriminatory practices have been practised by the commission itself. If we are really and truly interested in promoting the goodwill of man towards man, then how could this have happened? A very specific area of this report also goes on to say there was "inadequate priority given to identifying candidates from visible minority groups."

I myself, as a member of a visible minority group, here and now ask the question again: How could this have happened to a commission that was placed there to represent my interests and those of people like myself?

The Chairman: That is a very good question.

Mrs Marland: May I just say that I know your question is rhetorical, but in the preceding three days this week that we have been dealing with this matter, I have been stressing the concern, at least on behalf of the Progressive Conservative caucus, that the integrity of human rights in this province today stands at great risk because, as you have just so ably pointed out, that very body whose mandate is to protect all citizens of Ontario, no matter where they work, whether in the private or public sector, is itself practising in violation of the Ontario Human Rights Code. Thank you for bringing that out.

Mr J. B. Nixon: Given the debate that Mr Breaugh and I had, would it be worth while to ask our counsel to determine that issue, whether or not a human rights commission, whether it is reporting to the Legislature or the ministry—I do not think it matters—could have the power to issue orders to a third party outside of government and enforce those orders?

Mr McGarva: Just let me clarify the question.

1600

Mr J. B. Nixon: Sorry, whether the committee could adjudicate on matters and issue orders, a committee of the Legislature.

Mr McGarva: I would be glad to look into it further and report back to the committee. I think it is clear, under the present structure, that this committee does not have that mandate or role. I suspect it would require legislative change. It would result in a number of interesting changes in practice, I suspect, and some problems you may not even be able to predict today in terms of the level of appeals process that would then come to a committee of the Legislature as a result of those legislative changes.

The Chairman: Okay, your time starts now. You may proceed.

GRACE PERMAUL

Ms Permaul: I come before you today to share some of my views on the future mandate of the human rights commission, albeit somewhat obnoxious since I find it hard to believe that the commission does not seem to understand what

its present mandate is supposed to be.

As a brief introduction I will just tell you who I am. I am a graduate of McGill University, a graduate of Columbia University school of law, former student society president of McGill University and a former Harry Jerome Award winner. I have interned with the National Association for the Advancement of Colored People legal defence fund in New York and I have also worked on Wall Street, so my perspective is somewhat broad and I think what I have to say is somewhat reflective of my generation's views as well.

Having looked at this report, I find it somewhat absurd that the very commission that is supposed to be an advocate for human rights did not see what its goals and objectives were in its own hiring of staff. I further wonder how it is that more funds have been allocated to the hiring of staff when it does not seem evident that a clear policy has been implemented as to how staff are to be recruited and hired. Why are we then using taxpayers' dollars to go ahead and continue this process when we have not seemed to solve the problem.

I was also interested to find that on page 45 of the report it is mentioned, "But it was found to be due to the commission's approach to human rights that focused exclusively on individual case compliance and not on broader human rights issues such as systemic discrimination." Yet the report fails to go on and describe how are we going to deal with systemic discrimination, which is a major factor. We have to realize that the commission needs a vision, and there are specific reasons why. It is not enough simply to be a commission that places Band-Aids on the problem after it has already happened.

The commission needs to become a body that tries to prevent discrimination before it happens, and part of that will have to be through public awareness and advertising. From what I can see in the report, greater funds have also been allocated to education and to public awareness, and I hope that those funds will be used to try to gain public awareness of the fact that discrimination is not simply morally wrong, it is illegal and it will be punishable by law. There needs to be more interaction with community groups and different organizations that are advocating human rights.

I think also there is a need to make the climate more conducive to people who have complaints. We know as a fact that discrimination today does not take the very overt forms that it used to—no one is being lynched in the city of Toronto—yet people are being discriminated against in very subtle and very covered-up ways that are hard to detect. When you go to prove these cases of discrimination, it may come close to meeting the threshold of discrimination, but the victim really cannot prove that it has occurred.

The problem here lies not only in the fact that it is difficult to prove, but the victim continues to suffer. As of yesterday in the Toronto Star there was an article on a man who did in fact bring a case against the human rights commission and after that fact continued to face harassment and victimization. We have to come up with a means by which to solve the problem for those victims who do come forward and then face a possibility of terminated employment, harassment on the job or bad references in the future. We have to make the environment conducive so that people will come forward with their complaints.

I also notice that there was increased funding for research and policy. I hope that money will go forth to looking at issues such as whether or not

the judicial system itself is in fact bare. Is there access for all people to the courts and, if so, is the jury selection process fair? Because if we are saying that we are taking complaints to court, we had better make sure that people have a fair chance once they get there.

In addition, I would also like that those funds for research be used to look at the issue of nepotism in government agencies and other bodies. We have to realize that often jobs are not given to people simply because they are members of minorities, but because there are preferences, hidden preferences not based on merit which allow certain people to get jobs over others who are qualified.

But if in fact you cannot look at the future mandate of the human rights commission from a point of view of social conscience and social justice, then look at it from the point of view of economics. Discrimination costs our society; it costs all of us. It is not simply a matter of whom you discriminate against and that those people are going to suffer. If we want to be able to compete internationally, we have to have the best people in the jobs doing the best job possible; many of those people are visible minorities, many are disabled and many are women. The point is that if they are not given a fair opportunity, then in the end we lose.

Perhaps we need to look to the corporate sector. I am not saying that the corporate sector is fair or that a visible minority or woman will become president, but in the corporate sector the bottom line is the end of the issue. It does not matter who is doing the job as long as the bottom line shows a profit. Perhaps we need to have that kind of blindness when we approach this issue. We need to see that as a nation we are losing because we are failing to compete with the Japanese, because the best people are being discriminated against.

In addition, we also have to look at the changing society in which we live. If you fail to take action now, fail to sit on these suggestions that are made, and ponder and consider for years to come how to change this commission, then there will be consequences. Our society is changing. Visible minorities are becoming more educated and you are going to be moving into second, third and fourth generations. These people are not going to be settling for the jobs their parents had. They want to move into professions and will be looking for positions in management. When they come looking for these jobs, then there are going to be even more cases of discrimination that the commission will have to deal with.

When increasing numbers of AIDS patients move into the cities, look for housing or jobs and need better health care, the human rights commission is going to have to deal with those additional cases. When increasing numbers of single women and single families plague our cities, the human rights commission will have to deal with those cases. When professional women choose careers as well as motherhood and are being told, unfairly, that they have to make a choice or lose their jobs, there will be more cases before the human rights commission. As the commission is backlogged now and cannot deal with these cases, how is it going to deal with the cases that will arise from our changing society?

Inflation continues, we have an increasing number of elderly and an increasing number of homeless people. The type of society in which we live is changing and the commission's mandate will have to change to deal with that. In dealing with these problems, I think it is not enough to say, "Just appoint an independent committee to look perhaps at what should be done with the human

rights commission or even to review the people who have been hired," because I think there is a need to review why, if those people who were chosen—obviously not on the basis of merit, as we can see from this report—are still in those positions, they not should be removed and this whole process begin again in terms of looking for the right people for the job. In doing this, we do not want just a governmental body of elected officials sitting and making these decisions for the public. There should also be members of public groups, such as some of the people sitting here, included at least in the initial screening of who will sit on the human rights commission.

In conclusion, I think I should say that you have a unique opportunity to come up with a government policy that helps to enforce human rights. In so doing, you have the opportunity of creating a model that could be used by other nations and of really trying to solve the problem. We have not, in Toronto, reached the stage of decay that already has reached many American cities, but we are not far from it. You have the option of ignoring the problem or putting a Band-Aid on it or of clearly trying to solve it.

As we can see in other countries where government has failed, the people have risen to the occasion. When you do not, you will then have to face the possibility that organizations like the National Association for the Advancement of Colored People legal defence fund will come to life in Toronto and other cities and will put the cause of the people first. In so doing, politicians will then have to think of what issue they are then going to use to try to get votes, because human rights will suddenly become an issue that the people have taken on themselves and will have gained changes by using organizations outside of government.

I would like to believe that democracy works and that the government is able to do the job, but rhetoric is not what we want; we want action. Until we see it, the people will remain somewhat questioning or in a position where they really do not trust the government. I think that what will happen is that you will see other organizations take on the job and it will become even more difficult to try and create consensus in this population.

I hope that you will rise to the occasion, but in the event that you do not, the people will take on the issue of human rights themselves and then there will be a question of jurisdiction, a question of who is in the best position to handle this job, and there will be all sorts of chaos within the government itself.

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If you cannot look at this, as I mentioned earlier, from the point of view of having a social conscience, then look at it from an economic point of view, look at it from a political point of view, because human rights make sense. Not only that, it is what the people want, what the people are asking for and what the people will ultimately achieve.

The Chairman: Thank you. We have about four minutes left, so we will try to divide that among the parties.

Mrs Marland: Grace, you are breath of fresh air. I really enjoyed your presentation. You have obviously done a lot of homework in preparing to come here today, and that is impressive. I am particularly impressed with your commitment and obviously your age. We have a future in Ontario with young people like you. We perhaps will not make the mistakes we have made in the

past. I wonder if you could just tell us what field you are working in now, what it is that you are doing now, that brings you to this tremendous commitment and interest in this issue.

Ms Permaul: Well, first, and I know this is putting the egg before the chicken, or whatever you want to call it, but in terms of having a future in Ontario with people like me and my age, you will not have that unless you have some kind of human rights policy that enforces that youth and minorities have a fair chance, because it is a lack of that—I am the exception to the rule; I am not the rule itself. I am here because I was able to fight the discrimination, not because the system was working for me. I think if you want more people like myself, then you have to start by showing people that you are committed to them. At the present time, I just took the bar exam. I am now taking time off. I am reconsidering. I have worked for a year as a corporate attorney on Wall Street, and I just took the bar exam and am waiting for my results.

Mr J. B. Nixon: Many people have talked about using an all-party committee of the legislature for, among other things, reviewing or considering appointments to the human rights commission, particularly the commissioners who sit as the board of directors, as it were. Are you going further and suggesting almost a congressional model, where we come in and challenge them and even allow participation of the public in reviewing their credentials?

Ms Permaul: I am not even sure if the congressional model really works. What I am saying is that if we want the broadest perspective of what it is we are looking for when we choose people, in selecting people to advocate the rights of the public on the Human Rights Commission, it makes sense to me that you have at least a few representatives of the public who have been chosen by the prospective groups to sit on the committee in the initial hiring process, so that we do understand that when someone is chosen, there was some kind of consensus as to who belongs on the commission, rather than having an internal body select exclusively who it is that is going to represent these people when in fact they are not even able to have a say in the process.

Mr Breaugh: We have wrestled with this particular difficulty before. The best we have ever come up with, in my view, around here was the suggestion that we simply open up the whole appointments process so that everyone has a right to know what is going on in terms of how the appointments are made and where they come from and that every group in Ontario, for example, would have a right to put forward nominations to be considered.

So you get access to the system at that point. You get access to the system in terms of knowing what is happening to the appointment process, when an appointment is coming open, who is being considered for that, where your nominee is on the list, so to speak. In the final analysis, in a parliamentary system we have struggled with this notion that it has always been traditionally the government's responsibility, I guess, to put forward the actual nominee but that there would be a review by a legislative committee after the fact. Does that come a little closer to the mark of what you are talking about?

Ms Permaul: Somewhat. I mean, any participation is valued. At the same time, it depends on how seriously the nominations are in fact taken, because I think in a sense these people nominated themselves by applying for the job. They had their nominations in the running, but they were quickly disqualified from the race. So if you have nominations, then you have to be quite serious that eventually those people will be considered for the job. It

is not enough to say, "Well, we have considered X, Y, Z, but, you know, on the basis of what we have decided should be the criteria, we have eliminated this person."

Maybe what you also need to do is—in terms of determining what your criteria should be—involve some of these other groups in that process and have a clear-cut list of what it is you are looking for. Because, as this report suggests, when they looked in the files there was nothing there to suggest why these people were chosen for the jobs, there were no criteria. And how can you justify that?

Mr Velshi: It just occurs to me here, you mentioned that you were the exception rather than the rule. Now, I do not know, when you look around here you probably think that the two of us are also exceptions rather than the rule, but I want to question you on that. In my riding, I would not have won if I had not had the right vote. I think my colleague Mr Curling will say the same thing. My question here is, coming from the direction you are coming from in terms of youth, would you agree with me if I tell you that this is not a racist society as much as we have a good society but pockets of racism within that society which we have to eliminate?

Ms Permaul: Well, I think you failed to understand what I said, that I was the exception and not the rule. You can probably count on your hand, or two hands, how many members of Parliament there are who are members of minorities, but that is not the issue. Neither is the issue that you got elected by a white majority, because that happens. That is happening now in Mississippi; it does not mean that Mississippi is still not a racist state. The fact is that you may have made an appeal to the white population, you may have come up with the issues, you may have not discussed the issues that deal with racism with them. If you had, you may not have been elected.

[Interjection]

The Chairman: There will be no noise from the people in the gallery please or we will adjourn.

Ms Permaul: The point is that the fact you have to look around and say there are two of you suggests that perhaps this is a racist society. When it becomes not an issue any more, when it becomes not a factor that we have to be grateful and thankful for the one or two people we have, then maybe we can look beyond the racism issue. I think you are wrong; it is not a question of just whether or not we live in a racist society. Racism is systemic, and if you want to say because there are no lynchings, because a minority can get elected, because a woman can get elected, there is no racism, then I am happy for you. But the point is you have to look at the majority of people in the country, and how they live, and by what standards they are forced to live, and what happens on a daily basis.

We will always be able to have one or two minorities elected. But that is not the point. The point is that we want parity and we want equality. And that is something that we will probably always have to fight for in this society—disabled, minorities, women—but the fact is that once you stop fighting, and once you stop seeing the reality of the situation, you have truly lost the war.

The Chairman: Thank you for your presentation. Next we have Mrs Leeson. Take a chair at the end, please. We have allotted 15 minutes for your presentation and any questions that may be coming from that. You may proceed.

ELIZABETH LEESON

Ms Leeson: My name is Elizabeth Leeson and this lady is Eleanor Marr. I wish to thank the commission for allowing me to speak. Much concern today is focused on the future, or lack of it, for many of our children. Time is long overdue to take seriously the tragedy of a homeless generation; some of our children, at a very tender age, drifting aimlessly without a purpose in life.

Until now, the Ontario Human Rights Code did not apply to problems within the family. This is an issue which must be addressed immediately, as family is the cornerstone of society. It is not a legal issue, but denial of human and fundamental justice.

Three parties in the federal government consider unification of family an issue of priority. However, this applies only to people who have immigrated here. They are given preferential treatment in bringing their relatives to this country. They come from all over the world. The shortsighted attitude of the powers that be will not acknowledge the benefits which would be derived in allowing equivalent relationships to apply to the families of Canada.

Children who have experienced the trauma of divorce situations, or even worse, the death of a parent, are in many instances denied communication with one parent and/or grandparents. Upon the death of a mother or father, the surviving parent automatically acquires custody. A loving relationship with the grieving grandparents is very often denied, depriving each of the much needed solace and comfort.

A father, mother or grandparent ought not to be an object of litigation in order to prove a love and bond with the child. This leads to an animosity which could have been resolved. The law must be amended to avoid further traumatizing the already traumatized child who has now been placed in the middle of a conflict. If the bond with the child had been encouraged, many of the lost little souls would have received a haven within the love of the rejected parent or grandparent.

Because of indoctrination or fear of reprisal, many children join the ranks of the homeless. So many are crying for help that the telephone hotline for children has received thousands of calls since its inception. They are appealing for someone to listen to their plight.

Too much emphasis is placed upon what is referred to as the nuclear family, whatever that means. Grandparents are treated very badly in some of these situations where the senior generation is rejected and denied the joy of its grandchildren. Heritage is very important, and the parents are but a small part in the tree of life.

Parents are searching for children and children are searching for parents. Many have no idea from whence they came, no real sense of belonging. One has to be in this position to appreciate the sadness within the heart.

This must be written within the Human Rights Code. Fathers, mothers and grandparents must have rights unless proven—and I emphasize the word "proven"—to be an unfit person.

Despite presentations in this chamber, the special bond has been rejected by the present government of Ontario. It is now your responsibility to rectify an injustice which has been perpetrated for generations. Parent and

grandparent access must be given the status of a human rights issue and written accordingly. In so doing, much sorrow could be alleviated and families reunited.

To the ladies and gentlemen of the committee, I express my thanks.

Miss Roberts: What you are expressing here is a desire to have in the Human Rights Code something to deal with grandparents and to have certain rights for grandparents, is that correct?

Mrs Leeson: Yes, because I have spoken in this chamber on this issue on seven or eight occasions. From 1981, I have been struggling with this issue for eight years, since the death of my only child. At that time, it was unheard of, but there are hundreds of us, hundreds and hundreds and hundreds of us, all over Canada and all over the United States. We had tremendous support for Bill 124, but a bank of Liberals blocked it. It is as simple as that. It is time somebody listened.

The Chairman: I have a question. The article says "province of Quebec only." Does that legislation that they have allow rights to the grandparents?

Mrs Leeson: Yes, it does. Chatelaine called me and asked what the position was here in Ontario. They called me back several times and there was a presentation that was picked up in 1983 from that issue.

The Chairman: When they were dealing with the legislation here, was that not part of the presentation that was made?

Mrs Leeson: Nobody has listened. There has been presentation after presentation on this issue, but until we have a change of government, nothing will be amended.

Mr Philip: I am aware of your presentation under—what is it—the child custody legislation.

Mrs Leeson: Bill 1, which—I do not know what happened to Bill 1 and Bill 124 and Bill—oh, I do not know, I have lost count of them.

Mr Philip: I recognize what happened to them and so forth. Is it your experience—I know that you are connected with organizations throughout North America—

Mrs Leeson: I am not involved with any organization, but I know of them.

Mr Philip: Those who did make the presentations were involved. Is it your experience that any other jurisdiction has handled this problem under human rights type of legislation, or is it—

Mrs Leeson: Not to my knowledge, but I have been in touch with the human rights commission people. I tried to speak to Raj Anand when he had a human rights issue down at city hall in Toronto and he brushed right past me. I tried to find a human rights lawyer, and I did. Somebody did listen to me and he said, "Oh, well, we don't deal with that."

Mr Philip: I do not want you to talk about any specific legal matter that is before the courts—

Mrs Leeson: No, I definitely will not.

Mr Philip: —but there are, in your opinion, legal remedies as well, are there not, legal challenges that can be made?

Mrs Leeson: You go to a lawyer and the first thing the lawyer says, is, "Why are you not allowed to see your grandchildren?" You do not need a reason why to shut us out. And the lawyers invariably say, "Well, you should do this, you should do that." They give you advice on what you should do. But the hardest job is to get a lawyer to apply to court. They will brush you off. But I have been in court seven times.

Mr Philip: At considerable expense to you, and that is one of the reasons why tribunals are set up; to at least give a—

Mrs Leeson: The first access order that I did win in Ontario I represented myself right up to Associate Chief Judge Walmsley. It was the first case of its kind. The hearing was on 7 November 1983, but there was not a law to enforce the access order. There is enforcement now under Bill 124, but we should not have to suffer this type of indignity in order to see our grandchildren.

Mr Philip: Essentially what you need is legislation which grants you, as a right, access to your grandchildren.

Mrs Leeson: Definitely. The only relatives I have in this whole world are my two grandchildren. My grandson was two when his mother, my only child, died. My granddaughter was nine; she is now 17. The baby, who was seven months old, is dead. My two surviving grandchildren are my next of kin. They have a right to know whether their grandmother is alive or dead and I intend that they shall.

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Mr Philip: With society being under such pressure, where there tends to be more divorces now, more step-parents than in the past, is this an increasing problem rather than a decreasing problem?

Mrs Leeson: It is an increasing problem. I have had calls from all over the states, just as Mrs Lusher has had all over Canada, and there are people in every walk of life in this situation. We are not criminals, we are decent people. Criminals are moved to an institution close to their home so that they can keep contact with their families. We are ostracized, we are isolated; we are not treated as well as the criminals.

Mr Philip: I know the pain you have suffered, and indeed I have constituents who have shared with me similar accounts of pain. I think a child has a right to a grandparent.

Mrs Leeson: I may add, if you care to listen for one second, Mr Philip, this is a priority right on elder abuse. I am very much involved in elder abuse. As a matter of fact, I opened the issue.

Mr Philip: And you are saying that there are legislative changes that have been made elsewhere and they should be made in Ontario.

Mrs Leeson: Well, the only place is Quebec.

Mr Philip: And it is working in Quebec?

Mrs Leeson: I do not know.

Miss Roberts: Quebec has a civil code. We have it in common law.

Mr Philip: Yes, I realize that.

The Chairman: Are there no further questions? Thank you very much for making your presentation.

The next presenter is Ken Johnson. If you would like to take a seat, the same as the last two presenters, you have a 15-minute period to include your presentation and any questions that may be asked. You may proceed, Mr Johnson.

KEN JOHNSON

Mr Johnson: Although I am here, it is with great trepidation. I am very, very uncomfortable here, based on my experience with the courts, the federal and the provincial court on various levels for police assault on me, etc.

I am here rather perfunctorily. I have been through the halls of academia, and if I chose to, I could clothe my language rather diplomatically. I have chosen not to do that now. Rather than being obscure, I prefer to be understood and considered abrasive, rather than to be very euphemistic and misunderstood.

Even before we got here, when the young lady made such an effective presentation—Mr Chairman, this is about you and what I perceived to be a great degree of insensitivity on your part—the response that I witnessed here was not any more raucous than what I have seen in the House of Parliament being projected on television, and I thought you were rather harsh when you threatened to throw people out because people showed, in the only way they could, their allegiance with a statement that perhaps they could have made. I would like you to think about that.

I pointed out that I would be blunt and to the point. I would much rather be to the point than to be misconstrued. That was a mistake on your part. We were not being upsetting, we were not being disruptive, we were communicating. If you listen to any southern Baptist church where black people are, where they are communicating with their God, you can hear that kind of response. Culturally you should be involved with people with racial backgrounds apart from your own and realize that we had not at all attempted to be disruptive but we were demonstrating a certain cultural dimension that perhaps you have not been exposed to and to which you were a little too harsh.

That being out of the way, may I go on with my presentation? My name is Ken Johnson. I have been a teacher for many years. I have been educated in the West Indies and also in this country and I am very distraught, I am very disappointed with the wishy-washy method that people pursue in a pseudo-attempt to deal with racism.

I started a black club at the school 15 years ago and was suspended and charged excessively for that. Then 15 years later the same thing had been instituted which I did and for which I had been charged, suspended and threatened four or five times. You see, it was politically astute then, but when I was doing it, I was an uppity nigger.

Now I will deal with what you have the mandate to deal with, and that is the review of the hearing of the human rights commission, the seven people. I read the report. I am going to be rather brief with it. First I will deal a little bit with the history and I will tie them both in as I do that.

One has to make known once and for all that Canada is a racist country. Canada does not have the courage that South Africa has to acknowledge its racism. Canada is a chicken racist, you see, that does not like to be perceived as being racist.

I feel very strongly that individual Canadians, white Canadians, people who are looking at me here, are convinced that they are not racists and do not want to be racists, but look at our history. Someone mentioned the people in Nova Scotia, those people who came from Jamaica, descendants of the maroon who whipped the British. The British thought that the best way to kill those people was to send them to Nova Scotia, believing that blacks—Eric Williams, late Prime Minister of Trinidad has written extensively about this—could not cope with the cold in Canada, so they were sent up here to die. But we are a surviving group, hence Nova Scotia.

If we are going to deal with racism, we have to look at it historically. We have to wonder why it is that over the years only domestic blacks were allowed to come to Canada. We have to read books like Oliver and Smith who have analysed it extensively to understand racism in its Canadian dimension and what goes on. We also have to look at it from another angle; we have to look at racism and power and we have to understand that there is a very small line, almost obscure, distinguishing power from racism. And racism is the absence of power; that is a part of it.

When we consider the action of the human rights commission, when we think in terms of wanting now to lay blame on the former commissioner, the former commissioner had merely been living up to his expectations. Although it is a minor problem, I see no great fault at all in hiring seven whites. We are in a multiracial society. The question, and I have not heard that dealt with, is whether those seven whites are highly qualified. Believe me, I would rather see seven whites who have the courage and the integrity to ask appropriate questions and deal with racism than have seven token blacks up there who would jump when somebody says jump and ask how high. That is what we have with various aspects of the human rights commission.

I do not want to go through much of it, but in my experience I have found that the Ontario Human Rights Commission supports racism very, very actively. I have gone to the human rights commission representing people; I have gone to the human rights commission observing. I can remember very well one case I heard with a teacher who was very highly qualified. He had at least five university degrees and at least one doctorate. When he stood on the stand, very calmly, trying to explain, trying to answer certain questions, the lawyer was so hostile to him that his wife ran out of the court in tears. And they were being more hostile to him.

When one goes to the Ontario Human Rights Commission, one sees a culmination of the racism that happens outside; one sees a concentration and a magnification of the racism. I do not consider the Ontario Human Rights Commission an ally. One thing I do have is my will. I am making no apologies for being personal here. I would have the will to criticize the chairperson in honesty and integrity if I thought he was being harsh and going in too narrow a cultural focus, if he misunderstood what people did, and also with the human

rights commission.

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The Ontario Human Rights Commission is better dead than alive. Nothing you do in terms of restructuring can help the Ontario Human Rights Commission. It is comatose. It is suffering from an overdose of its own ineptitude, its own indecision. It is a reflection of the society that breeds it.

Hence, as in education—and I have been here many years—when we have a group of racists who are not as courageous as the racists in South Africa, when they are in a position of power and recruiting people, what in hell do you think they do but reproduce their kind? So we have racists, mind you, who are not necessarily aware. If that is a little harsh for you, we have people who have not as yet learned to make the historical differentiation between people in power, people who have been slaves and people whose jobs and social role have been carried on in spite of how hard they have broken out of that mould. Society, a former society, not anyone here, not those people, have put them in.

So if we are going to deal with racism and work on the Ontario Human Rights Commission, we ought to have a grasp of racism. We have to understand the subtlety of Canadian racism, and we do not. I will give you an example of why I say we do not. I have studied racism at the doctorate level and know what I am talking about, and even if I did not, I have experienced it. I have more grey hair than my father, who is twice my age. I know what I am talking about. To talk to you about racism is not just like going to Niagara Falls and telling somebody about it. There is a tremendous difference in having a honeymoon and partaking of all the joys and privileges that one does during a honeymoon and then telling somebody about it.

You do not and cannot understand. I see my brother here, Mr Curling. He cannot understand either, because he is part of a process. I am not saying this against you. I am talking about something one has to understand. In order to be accepted as part of this system, you have to ignore certain problems. If you do not, you get nowhere.

I applied for a job recently—I do not know if I wanted it; perhaps I was playing the devil's advocate—on the board for which I work. I spoke to a teacher for whom I have a great deal of respect and said, "Would you be my referee?" and he looked at me and laughed and fell off his chair. I said, "This guy is crazy."

He said: "Ken, you are a great guy, but there is no darned way I would be your referee. I do not want the director to know that I am associating with you." That is what my friend told me. How in hell will any of you understand that? A friend you invite home, a friend who would invite you home does not want the director to know that he associates with you. These are some of the things that we go through, and yet we have to be courageous. Yet I am prepared to lose my job, my life and everything, but not to succumb to racism.

A while ago Sister Monifa, who is not in here, made some point and I upset the chair; I did not intend to, but these are some of my own ideas. If we do not willingly make these changes, people are going to make these changes themselves. I, for one, perhaps would murder and feel comfortable about it but for the kind of training my parents gave me, and sometimes I feel like cursing my parents for developing in me the kind of sensitivity that I have because I would not hurt anyone. I always try a bit, and then I have the kind of

dialectic process, the kind of battle to do the thing that one ought to do.

We have been through world wars—do not look at me in such a nasty way—and world wars kill people in a more impersonal way. I would not at all be surprised if, before long, people who are growing up here in the school system, people who are sane and dealing on a one-to-one basis, blacks and whites, are going to go out there and then, seeing the blatant discrimination, resort to murder. I am not wishing for this to happen, I am being an observer. I am saying this is the sort of thing that will happen if we are not sensitive. And I point out it is easy enough to criticize, but I know that when I point my finger at any one, you have three pointing back at me. So there are several other things I could point out, but what I would like to do is to make some suggestions for correction.

One is that apart from totally dismantling the Ontario Human Rights Commission, because it is no use, it cannot at all change. It is like a building downtown; if you want to build something on the same spot, you have to remove what was there to put what is worth while putting there. Let's see the kind of building that we are going to put on the limited land space that we have. There should be qualified people, and I am not talking solely about academic qualifications, because this is another part of the dialectic process. If one has to go through the system, to live through the system, to get promotion through the system, then one has to learn to play ball—particularly politicians; you know the way to do it—one has to ignore issues that are sensitive, one has to say the right things and get the kind of promotion; in your case, get the kind of votes. I am not saying this derogatorily, I am saying this because you are astute and you know where you want to go.

In the same manner, people who ought to be in human rights—let me tell you what happens. There are lawyers, there are professors of law. You have people in administration and labour relations. Those people use a tool or tools that are not transferable. They have seen that, experienced people using criminal law, and they try to superimpose criminal law upon racism, they try to impose labour relations law upon racism. When we talk about labour relations, if somebody ought to have made the door 34 3/16 inches, and they made it 34 1/4 inches, you simply measure it. If it does not measure, if it is wrong—game over. It is not that cut and dried when you are dealing with racism.

Canadian racism is very subtle, extremely subtle. So what we have to do is get persons—not necessarily black persons, and this is what I consider the misnomer with the whole hearing here—but people who have the courage to look at the chairperson and say, "Mr Chairman, you are wrong." We will shake his hand outside and talk with him outside because there is no animosity. We have to get people who have the knowledge because if you have the knowledge and have not the courage—and that is what the human rights is stacked with, people with knowledge and no courage. So they have to have the knowledge. What I found with these people is they are highly qualified people, they are very highly qualified in all the irrelevant areas. I could call some names, but I have chosen not to do that now.

You have a law professor who is dealing with racism. You have one—and I am speaking of one particular person whose name perhaps I should call but I will not; I will deal with that later on—for God's sake, the man is a business consultant. When I have done studies in evaluation research at the doctoral level, when you are in evaluation—and I do a good deal of that—and when a company has you to make an evaluation, you have to think about your

job. If you go out and say to the company, "You are no good," no matter how accurately or how academically you put this out, you are not going to get another job because word passes on in the business that you are no good. So that when you have someone who consults for the board sitting on a commission determining whether the board is racist, think about it. That is one. Also—

The Chairman: I think it is time for questions.

Mr Johnson: Yes. There should be a panel also to think about, analyse the racism, whether it is or is not, because it is not something that you can measure as precisely as you can a door. You also should think in terms of the structure. One of the places where they have hearings in the 23rd, 22nd floor of a building, lots of marble, looks very fancy, it is intimidating. Another thing that bothers individuals is you go up and the chairperson sits on a very high chair and you sit way down. It is telling you that you are inferior. That is an immediate imbalance in power.

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I have had occasions where the chair—I have witnessed that—used racial terms, just as this chair does. That is one of the reasons why it is awkward, because I am in conflict with you right now. One of the persons there laughed. This chairman says, "I am going to get you out. If you laugh again, I will throw you out," because that person had been laughing at some humour that the accused had made. There were three times. I have recorded them all. When the other side made a joke, the chairman laughed his head off. I stopped him and I said: "Mr Chairman, you are out of order. If there is going to be no laughter, there ought to be no laughter. You cannot at the same time laugh and tell people from the other side who are from a different cultural background from you not to laugh." My lawyer got at me and said, "Cut that out."

So we have lawyers who are toadying up to these persons and they placate them so much, "Oh Mr Chair, please sir." They are not using the evidence of the case. They are begging and kissing his unseemly parts to get him to like them and to give them the case, not on the basis of merit, but because they toady up to him, are so nice to him and say such nice things to him. I see all that.

I am strongly asking you now to have a look at those cases that were thrown out, one in which I had been involved because the lawyer assaulted me verbally and called me a thief. I said, "Your behaviour is synonymous with that of a very generously disease-infected whore." I said that and I would say it again. At the same time, when Astaphan said, and I quote, because I do not use such language, "When the shit hits the fan," nobody threw that out. And that was more vulgar, more derogatory than making a parallelism that is biblical. In that particular case I went to the bible and showed them how many times the bible used the terms "prostitute," "harlot" and "whore." I used it not personally, but as a symbolic reference. The case was not heard because the present commissioner on the human rights commission had been deeply involved in it. While I was there with my lawyer, I overheard a conversation where that black commissioner told them he did not want to be there because of that. The lawyer went on and he said that people are going to assault that person. The number of racist statements that were made in that quasi court was appalling.

One more thing I will point to before I get out of here—thanks for bearing with me—is the very case that you ought to look into, and that is Ken Johnson versus the East York Board of Education, the case that was thrown out,

a case where my very lawyer was hostile to me, a case where, after spending six years at the Ontario Human Rights Commission, it went through all the processes that you know so very well.

The person who took the case was reprimanded. It was stated that they were at fault but they asked me what I wanted and I asked that they acknowledge that they were racist and they would not do it. I went to the tribunal and at the tribunal the case was thrown out because I would not withdraw my statement that his behaviour—not the man, the man's behaviour—was synonymous to that of a very generously disease-infected whore. Look at cases like that, when people without qualification would arbitrarily throw cases out. When I asked the chairperson, "How are you going to evaluate racism?" he said, "I do not know." I said, "If you do not know how you are going to evaluate racism, why should I believe that you know what you are doing?"

These are the kinds of things we have to look at. Finally, what is most hurtful of all is that after the case had been dismissed, the lawyer refused to have an appeal. The case lasted 16 days. They set themselves another 16 or 17 days after dismissal arguing and arguing. In that particular case, I paid my own lawyer. I was not represented at all. At one stage, when the legal fee was what I considered too much, the chairperson said, "You are acting as your own lawyer." There was great discrimination in terms of professional status, in that the lawyers had certain privileges. Oftentimes the defence lawyer would say: "You can't say that. You are not a lawyer." Yet I was told I was acting in my own defence.

These are some of the things that you ought to look at. There are a lot more things I can say, and I know perhaps people are going to say that I am emotional. I am rather alive and if I speak with passion, that is because it is a passionate case.

The Chairman: Thank you very much for your presentation. One short question. We are way over time.

Mr Curling: I have one short question for Mr Johnson; just one quick comment too. I have learned over the years with you that I should not debate with you. I have talked with you in some of the black history classes, but I want to grab this opportunity because quite a few people who have been here talked about the children of our society today, especially visible minority children. I just wondered if you could quickly comment on whether you think that the visible minority children are losing hope in the sense of what they are seeing here? Has that situation reached down within the school system? Are they losing hope and their aspirations of studying and aspirations of getting jobs?

Mr Johnson: The poet says, "Hope springs eternal in the human breast; man never is, but always to be blest." I do not know. The situation is such that it would not be unusual if they do, but when one looks at the dropout rate—I think in North York in grade 12 it was about 75 per cent; perhaps it would be more but they do not get to grade 12—and at all that is needed to drive and motivate students, I would not at all be surprised if they have lost hope. It is for us to continue. Even in this meeting I must honestly say I have not got a great degree of confidence in this committee, but one ought to have hope. It is not because you are not honest persons, not because you have not got integrity, but it is because I do not think that the situation is grasped very well at all. I really do not think so.

I could point out that when you talk about racism you have the Canadian Human Rights Commission and the Ontario Human Rights Commission; in all the boroughs or cities we have mayors who head commissions; in all the schools there are race relations officers, and these race relations officers are carefully chosen. There has never been one case when a race relations officer deals with racism. They placate, they smooth things over. Unless we stop being hypocritical our kids will continue to be hopeless.

The Chairman: Thank you, Mr Johnson. The committee is adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1656.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

ONTARIO HUMAN RIGHTS COMMISSION

FRIDAY 6 OCTOBER 1989



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Witnesses:

Individual Presentations:

Ubale, Dr Bhausahab, Commissioner, Canadian Human Rights Commission; Former Ontario Human Rights Commissioner; Former Commissioner for Race Relations

Wigle, John M., Lawyer, Simpson, Wigle

Batliwalla, Dr Bapai

From the Council of Jamaicans and Supportive Organizations:

Williams, Roy, President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Friday 6 October 1989

The committee met at 1009 in room 151.

ONTARIO HUMAN RIGHTS COMMISSION
(continued)

The Chairman: I call the standing committee on government agencies to order. You have half an hour for your presentation, sir, including any questions that may be asked, so you can use part or all of it for your presentation and you may proceed now.

DR UBALE

Dr Ubale: Thank you. I am delighted to see some of my old colleagues here.

I appear before you today as a concerned citizen, one who has passionately worked for the promotion of human rights for two decades. That passion has prompted me to urge you, and through you the people of this province, to take a serious look at the basic administrative approach to human rights in this province after nearly 27 years of our operation.

Let me state at the outset that I am not going to make any comment on the Raj Anand issue. My purpose here today is to make constructive suggestions to bring about some fundamental changes in the administrative structure of human rights. Let us look at the current situation as an opportunity to prepare the province to best discharge the human rights responsibility in the 1990s. That is the spirit in which I am going to approach this subject.

The area of human rights, race relations and multiculturalism and the conflicting and complementary operational interrelationship needs to be examined very carefully. If time permits, I will deal with all these aspects.

Let me begin with human rights enforcement. The first issue we must address is whether, with some minor structural changes, we should continue to operate basically the same way we have been doing for the past 27 years or look for an alternative. It is my firm conviction, born out of my practical experience in human rights at the provincial, national and international levels, that the instrument we created in 1962 is not applicable today in its present form.

No matter what level of resources, financial and human, you may commit to the commission, it will attract the same criticism as we witness today. We have gone through the cycle of criticism, followed by more resources, changing the composition of commissions several times in the past 27 years. I appeared before several committees and we had the same criticism time and time again. There are certain basic problems with which one must grapple.

The people—commissioners as well as staff—who have served on the commission since its inception were highly committed individuals, yet they suffered unwarranted criticism. The fault is not with the people who serve but

the system with which they are expected to function. This faulty system has provided continuous fodder for some who have made commission-bashing their pastime. It is unfair to human rights professionals who have been performing a thankless task at a great personal cost. Hence, neither a change of guard nor the infusion of resources and some ad hoc changes are likely to protect the commission from future criticism.

The human rights commission performs basically two functions. One is a regulatory function and the other is the advocacy role function.

As regards the regulatory role, the commission deals with cases of individual discrimination and systemic discrimination. The individual discrimination, that is, the case-by-case approach, has been the major, main target of criticism.

There are six stages involved in the process of individual complaint: investigation, conciliation, commission decision, appeal against the commission decision, board of inquiry and appeal against the board of inquiry. These are the six stages involved. The major source of problems is in two areas: first, investigation, and the other is appeal against the commission's decision. There is a general complaint that investigation takes a very long time, and everyone complains against the commission.

At a very early stage of the commission's operation—that is, the early 1960s—the respondents were co-operative, so they used to settle complaints quickly. Today that is not the case. The respondents, including public institutions, are challenging the commission at every stage of the investigation. There are more lawyers practising in the human rights area today than 10 years ago. Hence, there is a qualitative change in the investigation. These legal challenges have contributed to the workload of the investigating officer as well as delay in processing the complaint.

Equally, at early stages protected groups were not exercising their rights in the same manner or in the same number as they are doing today. With the publicity generated by some landmark decisions, more and more people are coming forward to fight complaints.

Thus there are both qualitative and quantitative changes in the application of the case-by-case approach. No matter what resources you put in, the human rights commission in its present form will not be able to overcome the delay and the public criticism.

Other jurisdictions have gone through this painful process. For example, I was in the United Kingdom in the 1960s. From 1967 to 1975, the Race Relations Board in Britain was subjected to severe criticisms for its case-by-case approach. Hence, in 1975, they enacted two identical laws, one on race and another on sex discrimination, creating two separate commissions. Under these acts the individual cases of discrimination were dealt with directly by county courts and industrial tribunals, leaving the commission to deal with systemic discrimination.

In the United States, the Equal Employment Opportunity Commission contracts out handling of discrimination cases to municipal and other local human rights agencies under the Civil Rights Act. In other words, they delegate powers under the act to local agencies.

I therefore want to look at this alternative. Drawing upon the experience of other countries in this field, I believe we should seriously consider the following alternatives:

(a) The Ontario Human Rights Commission should be given a mandate to deal with systemic discrimination only. This will enable the commission to use its resources more effectively to stamp out discrimination. It will avoid creating a monolithic organization with its attendant administrative problems and headaches. It will also spare the commission unnecessary public criticism.

(b) As regards individual cases, allowing immediate access to court deprives the complainant as well as the respondent of the benefit of the conciliation process that exists in Canadian human rights legislation. This has been a very useful and successful tool in settling a large number of human rights complaints.

We should therefore establish—and I say this with all sincerity—human rights commissions at the regional and municipal levels to deal with individual cases under the Human Rights Code. In this connection, we have the existing model of police commissions. This approach has a number of advantages:

(a) It will allow a large number of part-time human rights commissioners in the human rights movement throughout the province. This will take the human rights movement right down to the grass-roots level.

(b) The local respondents are likely to co-operate more positively with local commissioners than commissioners operating from Toronto. As a result we may have a higher degree of case settlements.

(c) Public criticism or cynicism directed against the Ontario Human Rights Commission will be diffused.

Another target of present complaint lies in the commission's decisions and the virtual nonexistence of an appeal procedure. Under the existing arrangement, once the commission dismisses a case, the complainant can appeal to the same commission for reconsideration.

Conceptually, it is wrong to ask the same people to hear the appeal of their previous decision. There is no appeal against the final decisions of the commission dismissing the case. Once the further doors are closed for the complainant, he or she tends to vent his or her frustration through media and other public forums. That contributes to the negative image of the commission. Other jurisdictions have appeal procedures to courts; we do not. Judicial review is not an appeal.

Moreover, the existing procedure is very inequitable as far as the complainant is concerned. I will give you a scenario. When the commission's decision dismisses a respondent's arguments and appoints a board of inquiry, the respondent gets a chance to challenge that commission's decision at the board of inquiry. However, when the commission dismisses the complainant's case, he or she does not get a similar chance to challenge that decision before the board of inquiry or another judicial body. The complainant, therefore, is denied natural justice.

This anomaly can be removed through the establishment of municipal human rights commissions. Let the municipal commissions follow the same procedure that is being currently followed by the Ontario Human Rights Commission. Once the local human rights commission dismisses the complaint, the complainant can appeal to the Ontario Human Rights Commission and then to the court.

In conclusion to this part, I wish to urge you to amend the Human Rights Code to establish local commissions and delegate them powers to deal with

individual complaints, leaving the Ontario Human Rights Commission to concentrate its resources on the more important issue, namely systemic discrimination.

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Now let me deal with race relations. As Ontario's first race relations commissioner, I have a great deal to say in this area. However, I sincerely hope my remarks here today will not be construed as my criticism against the administration of the current race relations policies. For the last four years I have not said a word.

Nearly 10 years ago we appointed a full-time race relations commissioner and the race relations division was created, naming the additional two human rights commissioners as part-time members of that division. So we had three commissioners appointed by order in council under the Human Rights Code. Their mandate was to develop policies and programs to promote racial harmony and to monitor the racial climate in the province.

Before that, the race relations work was carried out by the Ontario Human Rights Commission. However, the commission was dealing with a number of other issues. Hence, it was felt that there was a need to give special attention to race relations by creating the office of race relations commissioner.

After my departure in 1985, the posts of the race relations commissioner and the other two commissioners were abolished without amending the human rights legislation. The race relations administration had been submerged under the Ministry of Citizenship, something I fought for six years to avoid.

Ladies and gentlemen, I ask all parties to take an objective look at race relations as a nonpartisan issue and then decide whether you want to continue the present trend of burying race relations under multiculturalism and making it a bureaucratic institution or to maintain its public posture as an advocacy agency for minorities as envisioned in the human rights legislation.

A great deal of thought had gone into the creation of the office of race relations commissioner. For six years, I worked very hard to lay down the solid foundation of the administration of race relations in this province. Regrettably, it is being dismantled without any public discussion or debates.

Visible minorities suffered and will continue to suffer racial problems in one form or another. It is therefore important to have a group of prominent citizens, in the form of race relations commissioners, to perform an advocacy function for visible minorities. Commissioners appointed to race relations divisions are very good vehicles to discharge that function. They exercise their collective weight in the community to promote racial harmony and thereby lend their support to the cabinet committee on race relations.

The cabinet committee concentrated its efforts on race relations policies and programs within the ministries and other government agencies. The race relations commissioner did the same thing in the community at large. Thus, this division of responsibilities between the cabinet committee and the race relations commissioner dovetails to further our common objective of communal harmony.

Minorities need visible assurance from the government that their

interests are looked after and protected. The race relations commissioner and the race relations division provide that visible mark.

Moreover, when a government appoints a race relations commissioner, two things happen: (a) It recognizes the existence of racism in our society and the government's role to stamp out racism systematically; and (b) it also provides a signal to the rest of society that the government is serious about providing the leadership in promoting racial harmony.

Burying race relations under the bureaucratic layer may give satisfaction to some bureaucrats of capturing vital territory, but it will be fatal for the government.

The race relations commissioner, who is a public appointee, enjoys a position of access and influence with various public and private bodies. This enables him or her to open doors for race relations staff to promote race relations policies and programs in those institutions.

Race relations involve creating social harmony among the various sections of our society, with the help of community groups. This cannot be achieved by bureaucrats. When I was a commissioner, I travelled to every town in this province. I attended almost all the community group functions in order to seek community support. With their support, we tried to defuse racial tension at a number of places. Hence, the office of the race relations commissioner and the division are essential tools to promote healthy race relations in this province.

When I assumed the responsibility of the race relations commissioner in 1979, nearly 10 years ago, the first thing we did was to spell out race relations policies and programs for the next 10 years. That was published in the booklet called Race Relations Strategies for all society to see.

What was required after my departure was to follow those policies and programs rather than reinventing the wheel. The race relations commissioner's office was kept under the Ontario Human Rights Commission. That was creating some perception problems and administrative headaches. I was, therefore, advocating that the government separate the race relations division and put it under the chairmanship of the cabinet committee on race relations.

When I appeared before the legislative committee which was looking into human rights affairs in October 1985, I had outlined the kind of administrative structure the government should have for race relations. My views on the administration of race relations are well documented in those committee proceedings, as well as in articles I published.

In conclusion, we have spelled out both the strategy and the structure for the administration of race relations in this province. In the past four years, since my departure from the provincial scene, I have been greatly distressed, not so much by the change in direction but by the apparent lack of it. I have painfully observed the steady but sure erosion of the profile and the stature of the office of race relations commissioner.

I therefore wish to urge you to restore the race relations division and the commissioners as required under the existing Ontario Human Rights Code. Appoint as race relations commissioners those people who can mold public opinion in this province. This move, together with other recommended structural changes, will pay back the province a rich dividend.

I sincerely believe that this will ensure that people of Ontario will be

well served in the field of human rights through the 1990s and beyond. Thank you for giving me your time.

The Chairman: Thank you very much for your presentation. Mrs Smith.

Mrs E. J. Smith: Thank you, Mr Chairman, and thank you, sir. This is a most interesting paper, and as you have suggested, I will look for your past paper and read it. I am sure you have given a lot of thought to this. You talked in this about separating out race relations from other issues. In fact, you talked about race relations and then you talked about this.

I am left here with this problem, and while we have you here, I just want to get your input on that, because the human rights commission exists to serve a broader constituency. I think back to our great debates on Bill 7. When you think about the cases that became the big issues at that time, they were the services for the mentally ill, rights for gays, rights for children, the hockey case and so on. We have had presentations here at this commission from the group of grandmothers who feel that grandmothers' rights—so while I look at yours as a very interesting proposal on race relations, I am interested how you see the human rights commission continuing to deal with the other issues and how this would be reflected in how you have dealt with the race relations issue.

Dr Ubale: I said race relations. The human rights commission deals with the regulatory holding of race relations, so it will continue to process a complaint in the area of race relations as it does in all other areas. I was looking at how the whole intent of the race relations commissioner's office was to create an advocacy role, more of an educational role, promotion of policies and monitoring of racial climates.

For example, when the Ku Klux Klan was very active in the early 1980s, I was able to talk to community groups in London and in Windsor. It is through their support and their help that we were able to defuse it, because it was a job for the race relations commissioner to monitor those situations, on a day-in and day-out basis, and then also to speak out on the issues. I spoke against the Ontario government a number of times when there was an advertisement for the Ontario Lottery Corp projecting a Chinese community in a different light. I spoke out.

What you need is an agency, institutions or individuals who can monitor, who can speak out, who can become a visible symbols for minorities to go to.

Mrs E. J. Smith: I agree with that one. You have said we should break it down—I have the part now—into complaints about race relations, which is what you are now talking to again, and complaints from women, which is another big branch. But when you are saying that, I am seeing this other group that is lost.

Dr Ubale: No, no, no.

Mrs E. J. Smith: Now you are back addressing race relations. I am saying there is another group that I am trying to fit into that picture, namely, the groups that I have referred to that presently are served by the human rights commission.

Dr Ubale: Yes.

Mrs E. J. Smith: If you get into serving two groups, what happens to the other groups?

Dr Ubale: We are not breaking into servicing two groups, because as I say, human rights commissions will continue to deal with all protected groups, whether it is race, women physically handicapped or others, those affected areas. The enforcement side will be continued by the---

1030

Mrs E. J. Smith: On an individual,~ case-by-case basis.

Dr Ubale: No. I am saying that case-by-case should be done at the municipal level and systemic discrimination should be done at the state level. That is the argument that I am making.

Mrs E. J. Smith: I am just trying to understand exactly what you are saying. Going back to your case-by-case level that is being dealt with locally, because now we have the main body dealing with---

Dr Ubale: The Ontario Human Rights Commission, today, deals case by case.

Mrs E. J. Smith: Then your case-by-case dealt locally will deal with these other groups as well.

Dr Ubale: Yes, they will deal with all other---

Mrs E. J. Smith: It will not be just race relations.

Dr Ubale: No. I am talking about human rights as a whole, not in isolation.

Mrs E. J. Smith: Because it makes a big difference in how these will be structured.

Dr Ubale: What I am just saying is that the enforcement of human rights deals with sex, race, age, all that. Those grounds will be dealt with by the commissions at the local levels. But the advocacy function that we have---

Mrs E. J. Smith: There was one other question I was going to ask, and it is clarification I am seeking. You mentioned the police commissions as a comparable group. Is the reporting function of these groups---how they report, how they get their teeth, from whom they get their final authority and how they report back---

Dr Ubale: To me, there should not be any reporting mechanism itself.

Mrs E. J. Smith: On a case-by-case---

Dr Ubale: Yes, case by case, but each human rights commission at a local level will deal by case, as we deal today at the commission level. It is only the appeal that will come to---

Mrs E. J. Smith: Back to that group, back to the Ontario Human---

Dr Ubale: To that group, yes. Therefore, as I said, we would diffuse a lot of tension that we have, the complaints, the resource problems and others.

Mrs E. J. Smith: Thank you.

The Chairman: Mr Philip, you are next.

Mr Philip: Thank you for an interesting report. We appreciate your experience. You and I have talked about these matters for a number of years.

I want to ask you this question on your analogy of handling the local case-by-case at a local level. Who, in your opinion then, would appoint the commissioners and the investigators at the local level? Is that the municipality and the regional municipality?

Dr Ubale: As I said, the government can do that. We can have a partnership with the regional municipalities and the government, as we do at the police commissions.

Mr Philip: Under the police complaints commission procedure, we—and when I say "we"; I mean the province—under the new legislation, would not. It would be the local municipality that would set up the police complaints procedure locally. That has met with universal condemnation from the visible minority community on the grounds that those communities that are least sensitive to racial problems are going to be the last people on earth to set up a workable grievance procedure against the police. I guess my concern with the model you are suggesting is that if you decentralize it, then those communities that have less experience with visible minorities, or with the issues of people of different sexual orientation or any of the other things covered under the Human Rights Code, are going to be less sensitive in their appointment of commissioners and less sensitive in setting up a local complaints procedure.

Dr Ubale: No, because the complaint procedure would be defined in the act as it is today. All we are just saying is, give the delegations power. Delegate those powers to local municipal commissions.

As I say, we have commissioners from various parts of this province. There is a large reserve of goodwill outside Toronto in the area of human rights. As I said, if the commissioner were appointed in partnership with the local, regional and municipal government, I do not think that would create problems in the area of human rights, because the cases would be defined and the procedure would be defined. We have Ontario Human Rights Commission regional directors working in London. They are investigating the complaints in that area. They know the areas, and there are a lot of people involved in the communities, community groups—

Mr Philip: They are appointed provincially, and you and I may agree that there is not enough training, or adequate training, of the investigators, but there is at least some consistency because it is done centrally. The point that my colleagues and my friends, particularly in the visible minority community, complain about with regard to the police complaints bill is that some communities have shown themselves to be less sensitive to these issues than others and that those communities will be least likely, under your model, to appoint sensitive commissioners to deal with the kinds of issues you are talking about.

In talking to the leaders in the black and South Asian communities, you will find this point of view strongly expressed. You are going to end up with a checkerboard system under the police complaints procedure. I ask you, what makes you think you would not end up with a checkerboard system under this, in

which, if you are discriminated against in a certain way, in one community you are going to find justice, in another you are not?

Dr Ubale: I do not have any concern on that. As I said, if there is a question of training, we can provide central training for all officers in the province. That can be done. We do it at the federal levels. We have a lot of our people working in Manitoba. We have people in British Columbia, in Ottawa. We provide centralized training. We have centralized uniform procedures. So, that can be adopted. There are regional variations and I do not see any problem with that. Again, we are not only dealing with race relations when we deal with human rights; we are dealing with a number of other issues.

Mr Philip: Are my nine minutes up?

The Chairman: Five. Do you need another one?

Mr Philip: How much time do I have?

The Chairman: You have a minute and a half left.

Mrs Marland: You can have mine, Ed.

Mr Philip: I can have yours?

The Chairman: But Mr Velshi would like a question. The time is just about up. You have one more question.

Mr Philip: Okay. You are suggesting that the provincial human rights commission should basically deal with systemic problems and leave everything else to the local level. I am wondering if there is not a medium ground in dealing with the problem that we have heard from practically everybody; namely, that there is a problem at the Ontario Human Rights Commission that complaints do not get handled expeditiously and they drag on and on. You deal with that at some length in your report.

I am wondering if there is not a system similar to, perhaps, what the Ombudsman does, in which a complaint would be registered. It would be sent out to the respondent in a letter form. He would have an opportunity to respond by a certain date. Another response then goes to him, and then after that date, and conversations back and forth, the facilitation process stops. You kick in an adjudication process and you say, "Fine, there is this two-month period in which the problem is defined back and forth. If you do not respond, the hearing is still being held on such-and-such a date. Your failure to show up and respond on that date will be, as in in the courts, presumption of guilt, and therefore we will find for the claimant."

It seems to me that if you combine that kind of negotiation process with a quasi-judicial process, you are going to speed up the operations fairly quickly.

Dr Ubale: Yes. My gut feeling says, and I can only go by my own experience, that no matter what we do, what procedure we follow, what reforms we may make in the investigative procedures, we will have the same problem as we have today because there are legal challenges that are now being made by respondents at every stage of the investigation. This is not going to solve that. When I was the race relations commissioner, we also went through what we called the rapid process, in the sense that the moment we got the complaint,

we did the initial investigations. We tried to contact the respondent and we brought the two parties together before we even extended the investigation. We tried various methods and they would work for a while, and yet we are back again with the same problem that we had a few years ago.

1040

Mr Philip: The information we are getting is not that it is the legal challenges, which would be one in maybe—we will get the figures from the present human rights commission chairman—one in 20, one in 40, but rather that it is from the respondents simply dragging it out by not replying. Surely then, there are ways of dealing with corporations that do not respond to a complaint from the human rights commission. It is not just calling them up and saying, "Yes, yes we will get it," and six weeks later, calling them again. It would be possible to establish a procedure by which if you do not respond by a certain date, then a process kicks in and you are going to be affected by that process, and if you are not part of the game, then you can end up losing the game by default.

Dr Ubale: But what happens then with the whole area of human rights is that it deals with ingrained social attitudes. Now, for example, in the area of race relations, in a racial complaint, you feel it and yet you cannot pinpoint it. You are dealing with a phenomenon which is very difficult to prove, and therefore it would take a long time for human rights commissions to do the proper investigations. So if we decided to speed up the process, perhaps we might be dismissing our cases much more quickly. We may get more complaint disposals, but we may not give justice to a complainant, because we may not be able to do a qualitative investigation.

Mr Philip: Let me say this to you, that if Dan Hill and the Office of the Ombudsman can do qualitative investigations and reduce the amount of time that it takes by instituting various processes, then I do not accept that the human rights commission cannot follow the same kind of Ombudsman's procedures, because it is an Ombudsman's office, and increase its productivity and efficiency in the same way that Dan Hill and Eleanor Meslin have been able to increase the efficiency of that office. I just do not buy that argument.

The Chairman: You have gone way over time. Mr Velshi, we are over time now, but we will allow you some questions.

Mr Velshi: Dr Ubale, thank you. I will not go into a preamble, I just will get directly into the questions, in view of the time.

On page 3, you have made a statement here that commission-bashing has become a pastime for a lot of people. I personally think this is an unfortunate statement, because commission-bashing can only happen when there is a reason to bash the commission, and I do not think anybody generally takes it on as a pastime. I qualify the statement by saying that when this police incident took place, anybody who was very vocal was called an extremist or a troublemaker or something. I would like you to just elaborate.

Dr Ubale: I was just saying that when people complain or when they talk against the human rights commission, they do not take into account, as I said, the qualitative and quantitative changes that have taken place in the investigations, and they always feel that the fault lies with the human rights commissioners, the investigating officer. There are some people who have, as I said—I mean, I know some of the people who have been, for the last 10 years, just singing the same songs all the time. And it is only those types of

people—I am not talking of general complaints. I am saying that they do not understand the problems and the wishes of human rights officers in today's situation.

Mr Velshi: Right. The second comment is, on page 10, you are talking about race relations being submerged under the Ministry of Citizenship. Are you referring to just race relations there, or are you looking at human rights also in the same light, that it should not have any connection with the Citizenship ministry?

Dr Ubale: No, no, no. I was talking about race relations programs and policies.

Mr Velshi: Right. So you are not talking about any other type of—

Dr Ubale: No, no. Because over there, you should have human rights under one minister. It is immaterial which cabinet minister is responsible for human rights. I was just talking about the programs and policies.

Mr Velshi: Okay. There are some others who have come forward saying that the human rights commission should be directly responsible to such a committee rather than a ministry.

Dr Ubale: Yes. We held that view for a long time. In 1977, when the commission wrote the first report, Working Together, we advocated that position.

Mr Velshi: You do not think that being under the ministry gives it some more credibility in terms of—at least you are able to pinpoint government policy through the commission rather than having a body—

Dr Ubale: No. In other words, it is the other way around. I mean, the Quebec Human Rights Commission has much more credibility than the Canadian Human Rights Commission, which is a separate body. It has more credibility because, as independents, we speak, we do things that the commissions want to do. You do not have to look behind your shoulder and see what the minister is going to think or say about it. I mean, you do not have to do that as a commissioner. You should be able to speak your mind freely.

The Chairman: Thank you very much for your presentation this morning.

Next we have John Wigle. You have 15 minutes for your presentation. You can use whatever portion you like for your presentation and leave the balance of the time for questions.

JOHN WIGLE

Mr Wigle: Originally I understood that you either made an oral presentation or filed a brief. My apologies; what is being handed out to you now is really a hasty typewritten version of what I am about to deliver orally. I will cover certain points in it, though.

First of all, thank you for the opportunity. I am a lawyer in Hamilton; I was called in 1982. I do primarily civil litigation and administrative law. The latter includes human rights work and I have experience representing both respondents and complainants.

I am going to make some references during my presentation to a

particular case that I was involved in, merely to illustrate what I think are some problems. But I emphasize that the recommendations I make are mine; they are not those of the client or my firm.

The notice that I saw in the newspaper said that these hearings would deal with reviewing the operation of the commission and it referred to a particular report which was prepared for the Ministry of Citizenship. I make some comments on that report in passing but I am not going to dwell on it. I think, as the previous speaker said and I am sure many others did, that the focus of this committee should not be exclusively upon senior positions in the commission; that would be a mistake. I think that a hard look has to be taken at certain provisions in the Human Rights Code and at the quality of field investigations. That is a real problem, in my experience.

Also a point that I will spend some time on is the choice of complaints that the commission chooses to prosecute. I think that sometimes the commission has been misguided in certain complaints that it has chosen. I am going to cover about five basic points:

First, the respondent to a complaint always has to pay his own legal costs.

Second, even though the respondent may have the complaint dismissed, he almost never can get his costs.

Third, the commission has quite strong powers of search and it is not really obliged to make a great deal of disclosure to the respondent. I think that is an inequity.

Fourth, some complaints are prosecuted where there is a lack of evidence supporting them.

Finally, fifth, I do not know this, but I have some concern about whether all the commissioners who sit on the board really have adequate training or experience in human rights issues. If they are going to exercise a sort of "sober second thought" function, there really should be some attention paid to the appointment of some of those commissioners.

On my first point, respondents' legal bills: As you all know, the complaint is made, there is an investigation, there are conciliation efforts and then at some point the commission changes hats if it feels it cannot effect a settlement and it has to have the matter referred to a board of inquiry.

The complainant has the benefit of commission representation throughout this without any cost to him or her. Meanwhile, the respondent has to foot the bill entirely by himself or herself. If it is a large corporation, obviously that is not a problem, but if it is a smaller entity or an individual, it is a substantial cost to him or her.

I submit that this is an inequity in the system, especially when you compare it to the way the resolution of many other disputes in our country is handled. The point I will be making—and I am sure it is not an original or novel one—is that the complainant should hire his or her own lawyer or be eligible for legal aid, just as the respondent should be. I do not really think there is a strong incentive for a complainant to always negotiate in good faith when he has all his legal representation done for him at no cost. I do not make that universally, but I think there is that impetus, for instance,

in the Rules of Civil Procedure or some other method of resolution.

My second point is that the winning litigant basically never gets his costs. I would direct your attention to subsection 40(6) of the code. I have set that out briefly and I will just quickly paraphrase it. Where the board of inquiry dismisses a complaint and makes a finding that the complaint was, and I quote, "trivial, frivolous, vexatious or made in bad faith" or where it causes "undue hardship" to the respondent, then the board of inquiry can make an order of costs. As I am sure you are all aware, it is a very onerous test. It is a test that virtually does not exist in any other administrative tribunal, to my knowledge, or in the courts of this land.

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The effect is that the complainant is virtually shielded from an adverse award of costs. If he or she misrepresents the case or it turns out to be weak after being tested by cross-examination, still he or she can litigate with impunity. But the commission is a publicly funded agency and a worthwhile one. It is the one that bears the brunt of that prosecution. That is an unnecessary expense and I think a hard look should be taken at that.

My third point is that I think there really are uneven disclosure rights. If you want an illustration, have a look at section 32 of the code. I am not going to paraphrase it, but what it basically provides are fairly extensive and strong powers of search warrant and seizure of documents. While I do not think it is as draconian as the federal Income Tax Act, it approaches that in some respects. The reason why I think this is unfair is that the respondent basically does not have any structural guarantees that he or she is going to get disclosure from the commission.

In my experience, what happens is that while you get the complaint and you talk to the investigating officers, if it goes to a board of inquiry it is sometimes a week or two before the board of inquiry that you suddenly start getting some disclosure from the commission and its lawyer and a bumf of paper, but it is too late. I think that is wrong. So there has to be some provision, I think, in the code to make it a fair fight. That is assuming that there are some merits to the respondent's case. If there were no merits, the thing would have been settled a long time ago.

My fourth point is that the prosecution of complaints that I think should not be prosecuted should be resolved much earlier. Here I would say that my experience and impression is that the commission sometimes seizes upon a particular complaint and prosecutes it because it has the seeds of a test case that will hopefully produce a precedent or principle that is attractive to the commission or some interested third party. The problem is that while that may be a noble principle which we are trying to extract for the benefit of future guidance of all of us, perhaps the individual facts in support of that principle are very weak. And so what you have is a test case litigated on the back of a respondent who has to pay his or her own legal bill. I think that is wrong and I think it is a practice that has to be looked at very hard.

Now in the written version in front of you, I make some allusions to a particular case that I was involved with. I do not know how I am doing for time. I do not want to dwell on that. If you would like me to move ahead to my last point, I will, Mr Chairman, but—

The Chairman: You have six minutes left.

Mr Wigle: Okay, I think I will. All I would point to and underline

here is that the Divisional Court of this province, which polices the administrative tribunals, if you will, in this province, made a comment when it said that the commission "is granted broad powers to accomplish the aims and purposes of the code and must be vigilant lest by its acts and decisions it is, or is seen to be, guilty of reverse discrimination, or used by persons or groups whose real interests are to achieve ends not within the statutory framework."

In my experience, that warning has not always been heeded by the commission and third parties. Again, it is not a universal observation, but I have, in my view, seen some abuses.

Now I am going to move to my last point, which I suppose can probably be described as patronage. I am moving over to page 9 now. As you may know, in 1985 and 1987 the commission hired Coopers and Lybrand to evaluate the commission's efficiency. The consultants made a number of observations and one of them was that some commissioners were, and I quote, "neither particularly committed nor well informed about their duties and responsibilities." In other words, these appointments sometimes have become patronage plums.

Coopers and Lybrand recommended that the commissioners be appointed "strictly on the basis of merit." I endorse that and I think many lawyers who appear for the commission or for the respondents would probably endorse that as well. I think we need more knowledgeable people who, as I said, can exercise that "sober second thought" function in connection with the senior staff.

So my recommendations are:

First, with respect to individual discrimination as opposed to systemic discrimination, I think the commission should seriously consider confining its role to investigating and conciliating individual matters. By that, I mean it investigates and tries to settle it. If it cannot, it turns it over to a board of inquiry which has a hearing. I think Mr Philip made a suggestion which would put definite time parameters on it. I think that is probably a very good suggestion, but I emphasize that the complainant should hire his own lawyer on private retainer or legal aid. I think that would be just. I think the respondent should have the same rights.

I see a real problem if the commission has to wear three hats: investigation, conciliation and prosecution. The fundamental problem, it seems to me, is that with even the most diligent and conscientious investigating officer at the initial stages it is in the back of his or her mind that eventually he or she may be building a case to prosecute. I think that is a conflict at that stage. I think you want to segment that off, and so I think really the prosecution should be handled by someone quite separate from the commission. The commission can hand over its file if it will, but I think there has to be that division.

Second, the commission, from everything I have read, does make a strong and sincere effort in issues of systemic discrimination. It has set up a policy branch to research this. Let them focus on that. I think that would be a worthy thing for them to do. I am not abandoning individual disputes at all. I am just suggesting they be handled differently.

Third, I think the code should be amended to provide better disclosure rights.

Fourth, and I gather this is an oft-repeated comment, investigating

officers should be better trained.

Fifth, knowledgeable persons should be recruited as commissioners.

Despite my criticisms of the code and the commission, I think that both are welcome additions to the arsenal of remedies and to the administration of justice in this province. The common law clearly failed to address injustices to victims of discrimination. Legislatures had to intervene. I want the code and the commission to work, but before they can, they have to be improved. I think some of these suggestions would help that.

The Chairman: Thank you very much. You have used up your time. However, I would like to allow a question from each party.

Mr Philip: I will ask a two-part question then. I am certainly in agreement with you on the need for additional training. To the credit of the office of the Attorney General—and I am not all that complimentary of this particular Attorney General (Mr Scott) on a number of issues—one of the things that is going on is that with the justices of the peace it is recognizing too that they will do a lot better if it starts training some of the generalists. No one is questioning that; I do not think you need lawyers in those positions, but you need some kind of training. Ironically, I turned on the TV last night and saw that judges have their own training program now.

1100

My question on number 3 is, if you look at the functions of a number of the ombudsmen around the world, there is usually built in—and Dan Hill introduced it here in Ontario—a stage at which both parties have to come to an agreement of fact. Part of your problem with number 3 is the problem of disclosure. Do you agree that disclosure should be on both sides and that forcing them to come to an agreement of fact at least prepares the stage for a more equitable hearing on both sides? I would have thought that this would be just common practice. It makes so much sense.

Mr Wigle: My answer is yes, I think there should be full and frank disclosure by both sides at an early stage. Second, I think that wherever possible you should try to agree on as many of the facts that are not in dispute and then the hearing is devoted to those facts that are in dispute.

Mr Philip: And that would shorten the hearings, and often that process has resulted, in the case of the Ombudsman, in solving the problem so that you do not need a hearing at all.

Mr Wigle: You can save all kinds of time on oral evidence, I agree. In fact, if there is much paper in it, you can agree on documents which are accepted by both sides so you have a joint exhibit book. There is no problem on that.

Mr Philip: The second part of my question deals with your recommendation 1. I guess the problem I have with that is that the legal aid fees are so low at the present time—I know they have been raised recently, but the ceiling also is so low—that such a process would really hurt what I would call the working poor. You have to be really impoverished to qualify for legal aid in this province. If you happen to be a group that is protesting or has a complaint and a number of your members happen to fall into a higher income bracket, you do not qualify as a group because of the people who are at the high end of the income bracket. I am not sure that the legal aid system

then is an answer to your problem, for those reasons. I wonder if you would deal with my concerns.

Mr Wigle: First of all, I agree with you that litigation for the middle class can be financially ruinous. But if you first implemented your immediately prior suggestion, about bridging the disclosure and discovery process and the agreed statement of facts, you could save a lot of time, hence a lot of legal fees.

My second answer to your question is that perhaps the tariff should be amended.

Third, I think, in the short time that I have practised law, that inevitably the bar develops certain specialties. I think you would find there would be lawyers who would specialize in human rights, both for complainants and respondents. I think they would be glad to take cases.

For instance, I refer to a case where a very distinguished former counsel, John Sopinka, represented a football player before a human rights hearing. I have no idea what the retainer was there, but you can bet your life that he probably took somewhat less than what he would take on a big commercial case.

I do not dismiss your concern, but I think it would not be quite the problem that we all immediately fear. The point is, I think as long as you know the government is going to pay your legal costs, I am not sure there is a really strong incentive to settle early. That is a real worry I have.

I am obviously showing my stripe. I am probably more on the side of free enterprise, but that has been my experience, and I have done quite a bit of legal aid work in other areas separate from this.

Mr Philip: My feeling is that if you implement your recommendation 4, then you do not have that problem. If there is not a case, the investigator will throw it out at the investigation stage.

Mr Wigle: True. I do not know all of the witnesses you have heard from, but I have heard the view expressed that in the 1970s, and maybe even into the early 1980s, the commission almost never lost a complaint before boards of inquiry because it only prosecuted those it felt were really strong. The concern that I have is that subsequent to that time perhaps the commission has had too much of a workload so the weak cases are not getting culled out early enough.

The Chairman: I really appreciate your coming forward. It is a little different brief from a lot of the ones we have been getting and I appreciate your taking the time to come here.

Mr Wigle: Thanks for the opportunity.

The Chairman: Is our next delegation, Udo Franz, here? The 11 am one is here. She is at the clerk's office. She has a handicap. Perhaps our clerk will bring the other lady in.

I presume our clerk is bringing our next delegate.

Mrs Marland: While we are waiting for the next deputation, could we have some discussion about—we did have a subcommittee meeting this morning, off the record—

The Chairman: No, it was not a subcommittee, it was a committee that meets at 9:30 every morning in camera for a briefing with our lawyer.

Mrs Marland: I am sorry. Can I just ask when we might discuss, on the record, where the committee goes from today?

The Chairman: After we are done with our delegations.

We have Dr Batliwalla. You have 15 minutes to make a presentation to the committee. You may do it in whichever manner that you feel is satisfactory. Do you have an oral presentation that you would like to make at this time? You may proceed at your convenience.

BAPAI BATLIWALLA

Dr Batliwalla: I must say that, as you may have noticed, I am blind and I cannot see what is around me but I do hear voices. I think I have circulated 25 copies of the material that I am presenting. Out of about a dozen references I have, I have selected two to circulate which are more relevant. That is because these two are related to the introduction I make to my presentation.

I am raising my comments here, first, based on my professional experience and knowledge. I am a social worker by profession with an MSW degree from Bombay and another from the United States. I have worked as a social worker in four different countries: India, the United Kingdom, the United States of America and for the last 28 years in Canada. I have used that experience, and as my references will show, I have always been interested in community work and human rights.

1110

Second and more important, my comments here are based on some of the very unpleasant experiences I have had with the human rights commission.

I want to be very clear from the beginning that the views I express here are not those of the social work association, because my references show that I have been held in high esteem by it. I am not representing it and my views do not reflect it at all, nor do they reflect any other groups. I belong to a lot of different associations and my views do not reflect the views of any of the associations I am affiliated with. They are my own and they are based on my own personal and my professional experience.

By the way, in my presentation I may miss a few things. That is why I have given this written work, but I am not able to read now what I have written, so I am just recapping what is there.

For brevity's sake, I am approaching at two levels: one the code and its implementation and the other the commissioner, the staff, etc. Both these, I know, are interrelated.

As regards the code and its implementation, again for the sake of brevity and for clarity, I am approaching from two angles: the code as applied in individual cases and the code as applied on what I call the systematic level. I think that these two again not only are interrelated but should be interrelated, and here I emphasize from my personal experience that to make up a number of cases you close, you cannot speed up on a case. Sometimes the shortcut route does more damage than good, in my case particularly, where it

was very clearly stated that I was interested in the general issue as it affected the organization against which I was complaining. I am 71, and as I said, I was not interested in the result as it affected me individually.

The case in point I am referring to here also applies to Mary Jane Mossman, except that she was on a professorial level and I am on a student level. She had the support of the legal profession behind her; I do not have any other support. But it was similar in the sense that she left as contented with some of the general issues, which were settled, and the scholarships, etc. That is something I was looking for; to look into the system itself.

The speeding up, as was done by the officer, often does more harm than good, because then when you try to look into the system, they already have the information you are going to—in an agency where news travel from the first floor to the ninth floor before you reach there and where the papers and the files shuffle faster than playing cards, this kind of an approach does more damage.

Second, I am not saying that labour relations or reinstating on a labour relations level is less important or more important, but I think the issues are different. When you are working in a system like I am referring to, an inert system like the university system, a quick settlement of putting you back there where you have to work with those people day to day is a greater stress than it would be otherwise.

So I think these two have to be looked at in each case as to what they do; and worst of all, when a quick settlement is done, it reinforces the practices which go on. It gives the organization a satisfaction to carry it on again.

Again, another example of a quick settlement—I may be a little bit wrong on the information side, but I do not think I am wrong on a general level—was the case of the homosexual that was settled at university level. The case was quickly settled, but actually the guy did not get—there were in-between, subtle things that were going on, and a similar situation could apply to me.

Again, I want for the sake of brevity and to make it expedient—the details are there in my presentation—to talk about the staff qualifications. I am very concerned with the staff attitude and even staff knowledge. The staff has to have a knowledge of the system. I do not want an investigating officer to come and ask me, "Do you understand it works at two levels?" I have worked enough in the universities to know that there are different levels.

From the very first time—and here I am sorry, but I have to go into it—I called on an issue, and before the lady on the other side could even hear my complaint, she told me, "Oh, you are a university student, and when students fail, they always like to take revenge." I said, "Lady, there is a very narrow line between revenge and justice and I am talking here about justice."

That lady continuously has been rude and prejudiced. I did not and I still do not know whether she was white or black or yellow or red, but I do remember the voice. In the things she said, even before hearing me, she was completely identifying with the bureaucracy under which I was already caught.

I said: "People just come here and they make a mockery of human rights. The human rights commission is making it—" At that time, I had a certain

inclination from the kinds of vibrations I was getting from Raj Anand, but I did not even know what was happening, because this was last August. I wrote two letters to Raj Anand complaining and saying I could not work with this worker, even if she is a supervisor. I got no reply. The only answer I got on the phone was, "He is busy." I realize he is busy, but it does not take long to have a prescribed thing to say, "Such and such a letter has been received." I call it politics by not answering, so that they can say, "I didn't get it."

The next time, when I submitted a second letter, I went there, in spite of my handicap, with a note saying, "You received a letter addressed to so-and-so dated so-and-so from so-and-so".

I think that staff attitude and staff qualification are extremely important. Here I would say I realize, and this is one of the recommendations I am making, that the human rights commission is covering a large area and no one person can be expert in sexual harassment, racial harassment and the innumerable complexities that occur in the handicapped. Sometimes it is difficult even within the handicapped group to understand a physically handicapped from a visually handicapped. At that time, I recently had lost sight to this extent, and the kinds of questions that the officer asked me I would even feel bad to repeat. Here was a person with stress going to them and what was coming was more stress, more bureaucracy.

I am trying to remember one very clear example. Yes. The officer asked me of the whole case, "What do you want out of this?" I said: "Look here. I went into this education after a long practice because I did want to work on a particular area, which is a new area and a developing area. In doing that, I had to give up practising my profession and I have lost money." I was clearer than even now. I am not asking for money as a compensation for myself, I am asking for money which I know I will use well in different areas. I am comfortable, and it is not for money.

He told me, "When you found they were not responding to you, did you try to work?" I said, "My dear sir, when at the age of 67 I came out of the stream of my profession and went into it"—very explicitly stating why I was joining the university and stating the subject I wanted to work on—"and according to the university requirement I cannot work for more than 10 hours, how on earth would you expect me to?" "Then your case has no standing."

This is what I mean by lack of understanding. I felt all the time that the officer was not listening at all. He had particular things he said he would sort of want to say.

I think this is a violation of human rights and human dignity itself, and I am sure if such an issue went to the international human rights commission, it would be the first group to say—the provincial human rights commission should not be fundamentally different from the national and should not be fundamentally different from the international. I have worked on international levels.

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To make it very brief, my suggestion is that since there is a vast area that is covered by the human rights commission, there should be a panel of experts from whom the interviewing officer can get correct information, instead of—I did not know, but at times I would feel he was trying to make me say something which would incriminate me. The opinion created and the way—actually, I heard from people who are behind me, if you are with the

human rights commission, sorry. We cannot even stand behind you because we cannot trust that.

When I first applied to the human rights commission and I told my professor that I was going to the human rights commission, he said, "Oh, that's good." I thought he meant good. Later when I mentioned it to someone, he said, "Yes, he said it's good because they know that from this university, cases that have gone to the human rights commission have never been solved successfully."

Gentlemen and ladies—I do not know whether they are, so I will say "people"—please: The human rights commission fundamentally is human dignity, and if the staff cannot respect and show that dignity, how can they handle the bureaucracy that has already stepped on the dignity? The way he was questioning, there were times when I felt I was in Leninist-Stalinist Russia. I do not have to incriminate—and he said, whatever you tell me, I will have to share with them, and to this day I do not know, after being with them—

One or two of my suggestions, as I often remember, is a strong suggestion that there be a panel of experts in the different areas with which the human rights commission deals. Here I emphasize to include a social worker, not because I am a social worker but because the national human rights commission has approached the national social work association—I hope I am correct, and again, I am not talking on behalf of the national association of social workers—and we have got a circular that, since social work is based on human rights and dignity, we have to contribute towards a panel they are putting together in Ottawa. If the social work profession is considered so fundamental for contribution, I am sure a social worker on the advisory board—I am not saying only a social worker but also a social worker.

Then people who are working in sexual harassment—in the area of sexual harassment, I asked for a female worker. I was not given one. They only have this, "Take it or leave it."

I called Mr Schreiter on the phone. He does not reply to my telephone calls. I wrote a letter to him and I took that letter personally, with a signature, and it has been now nearly 10 or 11 days I have got no reply from them. When Mr Phillips was the minister, I wrote a letter to Mr Phillips, and that was a much deeper letter, with many detailed, spelled out things, saying that if I write more I may be adding a chapter to The God That Failed.

I got no reply. The only office from which I got a reply and support was Bob Rae's office. I wrote a letter to Mr Phillips and sent a copy to the Premier and a copy to Mr Rae's office. I personally would consider it is a common dignity of the other person saying he at least acknowledges. It does not mean you agree because you acknowledge.

Again, within the commissioner's group I would like to see a social worker at least there, and the knowledge that is required, besides the general factual knowledge, which definitely the person who was investigating did not have; a good knowledge of human behaviour and of people under stress. I had been under stress for seven years and the first time I called for help to the human rights commission I get some very nasty replies.

Now maybe it is too late, but in my original last letter to Mr Phillips I had suggested—I do not know Rosemary Brown, but I had suggested we need a person like Rosemary Brown as commissioner. Anyway, now we have got Ms Frazee there, and I have nothing against her, although I called her twice to say I

wanted to talk to her about her staff and all the reply I got was that, "She cannot talk"—on the phone I mean, not that she cannot.

What I am saying here is that this kind of attitude in and by itself is not befitting to anybody dealing with human rights. In my suggestions I have said that now I would still go a step further and say we need—believe me, honestly, I do not know Rosemary Brown personally. Even if I fell over her body I would not know her. I do know her by reputation and I have heard her over the television. I think we need a person—I would not say even "like," because it is very difficult to find somebody like, but that kind of person at this stage should be involved when we are looking at it and revising and looking at the whole thing.

Ms Frazee is very aware, I think, just from her own comments, that she is not in a very pleasant situation. She expects co-operation from the staff, and I wish her good luck with that, but that is not enough. The Ontario Human Rights Commission is a people's commission. It services the public. We are the public.

People who are interested should be involved at this stage. Again, I want to be very, very clear. I am not looking for a job and I am not looking for a fat salary of \$90,000, or even \$9,000. The more I earn, the more tax I will have to pay anyway. What I am saying is that public people who are sensitive to these issues should be involved in reorganization. Raj Anand's resignation has not really changed human rights. There is a lot of dirt under the rug which needs to be cleaned. It needs a clean sweep.

I have not mentioned anybody's name, but there is one person's name I want to mention. I do not know why she was overlooked in promotion. Again, I do not know that lady any more or less than the attitude she has conveyed to me in my interview. That is Beverley Johnson. She is empathetic without being sympathetic; she is accepting without criticizing. That is the kind of person—she has not told me. My own thinking is that she was overlooked, in spite of her seniority, in getting a position.

The Chairman: If I could just have your attention.

Dr Batliwalla: Okay.

The Chairman: We have gone about 10 minutes over time.

Dr Batliwalla: Could you speak a little louder, please? I am sorry, I cannot hear you.

The Chairman: We have gone about 10 minutes over time and I have one person who had one question, I believe.

Dr Batliwalla: Okay.

The Chairman: Mrs Marland.

Mrs Marland: Yes. Mrs Batliwalla, I just wanted to respond to what you have said this morning and ask you a question. Can you hear me?

Dr Batliwalla: Yes, I can.

Mrs Marland: In defence of Mr Anand, the former chief commissioner, and the current chief commissioner, Ms Frazee, it would not be my expectation

that people in those positions can return telephone calls. They have staff to deal with our complaints, those of us who need to go to the Ontario Human Rights Commission. However, I think the areas that you have identified this morning, that being the attitudes of staff, are important points.

They are important points for the attitudes of staff no matter where they work in this province. The concern that you identify is that if you have a nonpositive experience with the Ontario Human Rights Commission, which is responsible for making sure that everyone's rights are protected, then you have a very real concern. But is it fair to ask you that you would have experienced a poor attitude in terms of staff treatment in other employment sectors throughout the province, not only at the Human Rights Commission?

Dr Batliwalla: Whether I have experienced others? Is that your question?

Mrs Marland: Yes.

Dr Batliwalla: In Toronto I have experienced that, I would say, because I recently moved to Toronto, "recently" in the sense when I joined there. I consider London, Ontario, as my home town but it is since I moved here I have found—but still the question remains that if this is a prevalent attitude and if a complaint is made about that prevalent attitude to an organization, that organization has to be still more alert. That is the—

Mrs Marland: Exactly. We recognize that.

Dr Batliwalla: Second, I would say that the attitude towards me I would not completely put down as racial, not in my particular situation. It is too complicated at this stage. At one point, I wrote a letter to the provincial Ombudsman saying that there are these various issues. I am not able to pinpoint which it is. I had lodged a complaint within the university itself. As I wrote in that letter, one particular person has used it. As I have said before, the message goes up on the ninth floor. He has used his position as the director to influence the others.

If he knows that A is racial, then he would play on that and I would get that. If he knows that such and such person is a feminist, then he would go there. It was a manipulation and handling within the group of one particular person, which more and more I identify as—and I have shared this. After I did not get a woman to talk to from the Ontario Human Rights Commission, which I requested a number of times, I spoke to people in that area and it is a combination of a person in power feeling sexually rejected taking his revenge back. I am prepared to go along with that. That is the key issue and then that person has used all his particular influence. As I say, the whole thing is so messy and such a network that people are even scared to stay behind.

The Chairman: Thank you, could we have your attention now. We have one more short question, please.

Dr Batliwalla: Sure, have I answered your question?

Mr J. B. Nixon: Mrs Batliwalla, it is not a question, but a comment. I would like to thank you for your presentation and point out to you that the new chairman of the human rights commission and her staff have been present throughout these hearings and have heard your submission, so I wanted to assure you of that.

Dr Batliwalla: Thank you very much. I do hope that, more than my presentation, the written material will make sense.

The Chairman: Thank you.

Dr Batliwalla: Thank you all very much for your time. I wish you all the best of success in what you are trying to do.

The Chairman: Our next appointment does not appear to be here, so we will continue on at this time. Mrs Marland, you had asked for—Mr Nixon, yes?

Mr J. B. Nixon: One point, Mrs Marland: Mrs Smith had to leave briefly. She hoped to be back to hear your discussion on this and she said she would be back in about 15 minutes. So, Mr Chairman, I am in your hands if you want to proceed, but Mrs Smith had assumed the other presenter would be here at 11:30 and that we would proceed, and had hoped that we hear from Mrs Marland—

Mrs Marland: I am not going to be very long, so if you want me to wait, that is fine.

The Chairman: It is up to the committee, whatever you want to do.

Mr J. B. Nixon: Mrs Smith asked to be here, that is all.

The Chairman: We will take a five-minute break, somebody will be able to find Mrs Smith and then we will continue. I think she is in another meeting somewhere, if I am not mistaken.

The committee recessed at 1134.

1147:

The Chairman: I will call the committee back into session again. Our last delegate is here. We hope that Mr Williams would be as brief as possible, get his main points across, and we will have some questions for him.

COUNCIL OF JAMAICANS AND SUPPORTIVE ORGANIZATIONS INC

Mr Williams: My apologies for not getting here at the appointed time. The difficulty is when you have to do everything by yourself and you do not have enough time to do it all. My apologies also for not having a complete copy of my presentation to you. We will get through possibly the third page. I will have the fourth and you will not have the fourth, because we did not get it typed and so on and so forth. Also, I am prepared to send a more complete brief following this hearing.

Seeing that the time is short, I will get on with it very quickly. First of all, I would like to thank Mr Philip for sending me an invitation to come to this hearing. One of the things that I think we experience in the community is that we are not always aware of what is happening and when it is happening. I think there are more frequent presentations we would like to make, but we do not always know that they are occurring. So I want to give that "thank you" to Mr Philip.

On the first page, we really talked about the pervasiveness of racism and discrimination that exists in Ontario today. We would have hoped that after quite some time of living with a number of people of different races and

different countries of the world this would have subsided considerably, but even yesterday, I understand, there was something in the paper that indicated the state of racism which still exists in our society today. And last night on the radio, Ed—I forget his name—had a program on this matter of racism and it was amazing to hear the people who phoned in and indicated how they would not have an interracial association and that sort of thing.

So the point that I really want to impress upon you is that this still exists in a very paramount way in Ontario today. This tends to cause a fair amount of disillusionment, discouragement and frustration among people who are arriving, and are arriving in increasing numbers, from different parts of different parts of the world. Increasingly so, the majority of them appear and tend to reside in Ontario. When they are faced with an inability to find jobs at which they can use their level of training, education, experience, because of discrimination and so on, it tends to be very disillusioning, discouraging and often very frustrating.

The impact of this on their offspring is very devastating as well, because it tends to lower their own levels of aspiration, their own educational performance and their perception as to opportunities which exist in the society for them to achieve their full potential. Also, the absence of role models in important positions tends to be a discouraging factor to them.

So we see that there is a very great need for the Ontario Human Rights Commission. And we certainly start with the government, a need for a government that believes fully in the right of every individual in the society to equal treatment in every respect and that this is a cornerstone of social policy. We need a government that has the internal fortitude to see that it and its agents and agencies ensure that these individual rights and freedoms, as contained in the Charter of Rights and Freedoms, the multicultural policy of this province, the multiculturalism act of Canada and the Ontario Human Rights Code, are vigorously and forcefully pursued and enforced.

The expectation is that this is, or ought to be, the mission of the Ontario Human Rights Commission: a very strong and forthright advocate for the rights of those who are less able or unable to protect themselves from the devastating consequences—and these consequences are emotional, physical and psychological—of exclusion due to racism, prejudice and discrimination.

The record then is one of disappointment, disillusionment and distrust. Quite often in the performance of the Ontario Human Rights Commission there is a lack of confidence that a complaint will be fairly and expeditiously dealt with. The delays are interminable. Justice delayed is equivalent to justice denied, and many feel that justice is denied. There have been backlogs of up to four or five years, and these are unacceptable. Many feel a complaint is a waste of time; nothing will be done, a lack of confidence in the system. Many believe that the commission has become overly bureaucratic, that it is peopled by paper-pushing bureaucrats rather than by concerned and committed activists and that a case is merely a case rather than a human being who is hurting from the humiliating and destructive experience of exclusion.

Many feel that there needs to be greater accessibility, and the questions are often asked: "Is the commission housed in a too imposing building, in a too remote location therein, on a floor that is near the top versus near the bottom? Is it easy to find the commission? Are the receptionists really receptive? Is the intake officer helpful and facilitating to one who is often a bewildered and confused complainant, who is not well-schooled in the fine points of the laws, the regulations, the

documentation, the presentation of evidence and so on?"

Many feel that the scales are unevenly balanced—the disadvantaged, unschooled, wounded complainant versus a very sophisticated, well-financed, well-advised offender who can well afford a battery of high-priced legal experts, a very unbalanced situation. Many feel that the present operations of the commission function as a strong deterrent to the potential complainant rather than as a deterrent to organizations engaged in discriminatory behaviour.

So what is needed? A restoration of the race relations commissioners, as I understand is presently provided for in the code, certainly a very aggressive public education campaign to inform potential offenders as to the behavioural norms that are socially acceptable and that are now enshrined as public policy in this province, certainly a very aggressive public education campaign to inform potential offenders of the behaviours they ought to expect and of actions they must take to inform potential persons who are offended—so we are talking about potential complainants there—potential complainants of the behaviours they ought to expect and the course of action they must take when the code is violated; certainly the establishment of due process mechanisms where the complainant will have his or her day in court, so to speak, where he or she will be supported with appropriate legal and administrative mechanisms to ensure that the matter has been dealt with in a manner that not only is fair but also is seen to be fair and just.

There must be an appropriate appeal process, some mechanism to the extent that where the person feels that he or she had not been properly dealt with, there is a point beyond which he or she may approach.

The consequences for violation of the code must be severe. Penalties must be costly, fines must be heavy, otherwise the perception is that it is an act without teeth. A small penalty following an interminable delay in the process is clearly seen by the offender as merely a slap on the wrist, a slight annoyance, one of the minor costs of conducting his or her business. This certainly is not acceptable.

Mediation: The mediation process must not be overdone. It must fit into a total scheme for the resolution of disputes. It must not be merely mediation and continued mediation.

It must become easy to complain. The process should facilitate the laying of genuine complaints. A skilled intake worker should be available to help the complainant and to explain the process to him or her.

The process, and I am talking about the time here, must be compressed, and reasonable time limits must be placed on the investigation and subsequent phases of the process and the complainant must be kept abreast of proceedings. We are taking about maybe 30 days for this particular phase and 30 days for that phase. The point here is that, right now, attempts to get a matter dealt with before the commission just take too long. It goes on and on. /w have to put things in place to compress that process.

We need a greater use of the tribunals process. We have many examples of tribunals in Ontario such as the Ontario Labour Relations Board, the Workers' Compensation Appeals Tribunal and the public complaints commissioner, that kind of mechanism, where the individual gets to come before the persons who have offended and broken the law and be able to almost have a court appearance.

In relation to commissioners and staff of the commission, both the

commission members and commission staff should represent, to the rest of society, a model as to the composition within their establishments. Commissioners should be from all the target groups and commission senior management should be from all the target groups. Commission employees at every level should be from all the target groups. The Ontario Human Rights Commission should be a model of employment equity in operation in this province.

The Ontario Human Rights Commission should be the responsibility of the Legislature as a whole or a committee thereof. The things that we are talking about here are the total responsibility of all elected members; they should not be assigned to a particular ministry. The commission should not have to suffer the vagaries of different ministers or ministries with varying commitments to this issue, and its budget should not be influenced by different ministerial priorities.

I am sorry we have run out of copy for you; the secretary did not get the brief all done because of the rush.

It should not have to be booted around from one ministry to another according to the whims of the government of the day. The chief commissioner and his or her commissioners should be given greater autonomy to discharge their mandate as they see fit and not have to be wary of or concerned about or tied to the political fortunes of the minister of the day.

As it relates to budget, needless to say, the Legislature needs to provide adequate funds in order to properly staff, equip and motivate the people in this commission in order that they may do one of the most important tasks that needs to be done in this province; that is, the enhancement of the dignity of every human being in order to enable him or her to contribute maximally to the improvement of his or her quality of life and certainly, by extension, the quality of life and the ability to contribute maximally to the wellbeing of the province of Ontario.

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This is my submission. I am sorry to have been a little late in getting here. I have tried to rush through it as quickly as possible in my remaining time.

Mr Philip: Thank you for an interesting and excellent presentation. One of the areas that you and a number of groups have raised is the autonomy of the Ontario Human Rights Commission. I assume that in addition to your recommending that the OHRC, instead of reporting directly to the Ministry of Labour, the Ministry of Citizenship or any other ministry, should be responsible to a committee of the Legislature, you would probably feel that the chief commissioner, the chairman of the commission, should be appointed by a committee of the Legislature rather than by the cabinet.

Mr Williams: I had not given a great deal of thought to that. I do not know, administratively, how easy or difficult that might be. If it is not a great administrative problem, I would have no difficulty with that, but I think I would want to lean to the ease of administration of that particular matter. If the government of the day is better able to do a search for the selection of the chief commissioner, that would be satisfactory.

Mr Philip: For example, this is the way the British Columbia Legislature handles the appointment of the Ombudsman. After massive

advertising, the government gives a list of 10 of the best candidates to a committee, and the Ombudsman must be appointed by consensus, not by majority vote. That seems to work well in appointing someone who has the respect of all members, regardless of political persuasion.

Mr Williams: I would have no difficulty with that. I think that if we could get that system, it certainly would be appropriate.

Mr Philip: Would you agree also that the budget and estimates should perhaps be handled by a committee of the Legislature and that the final budget, of course, be approved by Management Board of Cabinet?

Mr Williams: I would have no difficulty with that either, because as I have indicated here, I think it is the global responsibility of all elected members, and certainly I would have no objection to that.

Mrs E. J. Smith: It is the Board of Internal Economy.

Mr Philip: Okay, the Board of Internal Economy.

You say that mediation must not be overdone. That is something I certainly agree with. One of the problems seems to be, from what we are hearing—and we will have to talk to some of the investigators, hopefully, and see what their views are—that mediation can take so long because, if a company wishes to stall, eventually the complainant will go away.

One of the things we have been suggesting here is that mediation should have a time limit after which there would be a hearing. The respondent's failure to appear at that hearing would be similar to failing to appear in court. The assumption is one of guilt if you fail to appear and respond. Would that system speed up the process, do you think?

Mr Williams: I would think so. I would think that the various mechanisms that are currently being used to avoid dealing with the issue would be contracted severely if we did that. The frustrations which the complainant experiences could be overcome if we were able to put things in place to contract it.

Mr Philip: We heard someone say yesterday or the day before, I think—I am dealing here with your comments about the need for accessibility—that having gone to the commission, he was handed a very complicated form that was very discouraging and that unless a person has access to a member of the Legislature or a legal aid clinic or someone assisting in filling out such a form, this is discouraging.

In other types of tribunals there are facilitators who will work you through the form and, in fact, take it orally. Has it been your experience, from those people you have been involved with who have laid complaints, that there is a lack of facilitation at the board? I can walk into the Ombudsman's office just up the street and have someone sit down with me and say: "Mr Philip, what's your complaint? Let's talk about it." He takes notes, and I could be completely illiterate and still have my complaint dealt with. I gather you are saying that this does not happen.

Mr Williams: That is what comes to my ears. I have not had an experience myself of making a complaint, so I cannot speak from personal experience, but I am hearing that people find it difficult to deal with too complex a system, and it needs to be simplified in some way.

If I might mention, in the report, the commission had 70,000 inquiries province-wide in the last year, so there are a lot of people who needed to ask something of the commission. That boiled down to 2,000 cases, so it would seem to mean that there are a lot of people who, at some point, say, "I won't proceed."

Mr Philip: I am not trying to defend the status quo, but it may also mean, though, that the intake people or investigators are so skilled they have been able to mediate some kind of solution so that the complaint does not need to proceed to adjudication.

Mr Williams: It says 2,000 cases were dealt with by the commission. I assume that only 2,000 actual cases were completed.

Mr Philip: We need to get some clarification of those figures. Certainly the chair is indicating that she is happy to provide that to us.

Mr Williams: Okay.

Mrs Marland: Mr Williams, this is a very comprehensive presentation, and I do not think you need to apologize for it at all. It is excellent. Can I just ask you if any members of your Council of Jamaicans and Supportive Organizations have been employees at the Ontario Human Rights Commission, that you are aware of?

Mr Williams: Yes, I think there are several of our members who have been and, I think, still are employees of the commission.

Mrs Marland: Of the human rights commission.

Mr Williams: Yes.

Mrs Marland: Have any of those had grievances or concerns about the practice of not hiring visible minorities at the human rights commission?

Mr Williams: Yes. The item that has had a lot of publicity in the past year has been about senior executives in the commission and the number of persons from various target groups who made application and were deemed not to be sufficiently qualified for the position. They have felt, yes, very much aggrieved by how that matter was dealt with and how their own applications were handled.

Mrs Marland: The interministerial government report that looked into the Ontario Human Rights Commission identified at least three visible minority people who had the qualifications but in fact were not even interviewed. Are you aware of those three individuals?

Mr Williams: I would be aware of at least two of them. I am not sure I am aware of the third.

Mrs Marland: And two of them are female also, I think.

Mr Williams: Yes.

Mrs Marland: Can you identify who they are?

Mr Williams: The names do not---

Mr J. B. Nixon: On a point of order, Mr Chairman: Again, I would ask

Mrs Marland to consider the discussions we have had with counsel before about the need to balance, on the one hand, our desire for full disclosure in the public interest and, on the other hand, the need to provide confidentiality to individuals whose reputation or career may be affected by disclosure. I do not know which side the committee should fall on. I would urge in this case that we fall on the side of protecting these people who are, I assume, presently employees of the commission and do not need that information publicly disclosed.

1210

Mr Philip: My concern is that there is a whole grievance procedure set up and I am very conscious that unless these people have suggested that they wanted to appear before this committee or have their particular concerns aired in this way, such a public airing might hurt any other proceedings which they have initiated or which they have asked their legal counsel to initiate. I am quite prepared to allow anybody who wants to talk about anything related to the commission to appear before us, but that has to be his or her decision. I am concerned about people's personal rights being interfered with if they are taking other routes to solve their problems.

Mrs Marland: It has just been said that there is a grievance procedure available to these people. Would you agree that there is a tremendous irony here that there are people who are of visible minorities, and they may, as well, be female, who are in the employ of the Ontario Human Rights Commission who have a grievance, and normally, if they were employed in any other sector or any other agency of the government, public or private sector, their grievances would be to that very body which is their immediate employer?

Mr Williams: Yes. Simple justice dictates to us in this very subjugated society that a mechanism be in place to enable anyone who has a grievance with the system to have a process by which that can be dealt with. If that is not in place, I think that is a defective system.

Mr Philip: They can go, under the present system, not just to the human rights commission. If their complaint is against the human rights commission, they can go to the Ombudsman or the Civil Service Commission. There are other routes available to those parties.

Mrs Marland: Just one final question. You say that the Ontario Human Rights Commission should be a model of employment equity. Are you gravely concerned, or concerned at all, that there is not an employment equity program in that agency which should be the role model to every other employer in this province for employment equity?

Mr Williams: I think that behaviour is modelled. Each one of us models behaviour, and people pattern behaviour after us. Our children pattern behaviour after us. When you have a very important government agency modelling a particular behaviour and it attempts to instruct other organizations in the opposite direction, it loses a considerable amount of credibility because the person or group that it attempts to instruct says: "Look at your own situation. Why don't you put your house in order and demonstrate to us what it is that you are trying to preach to us?"

The Chairman: Thank you for coming before the committee this morning. That was our last delegation today. I would like to thank Catherine Frazee for being with us this week, listening in and getting all the

information that has been presented. It was very much appreciated, seeing you here every day, and the ministry staff.

Mrs Marland: May I just add to your comments that I have been very impressed with the commitment that Ms Frazee and her staff have shown by being here continually, every day? It is a tremendous effort to do that, and I think it shows very well that the future of the Ontario Human Rights Commission, with its new chief commissioner, certainly holds a great deal of promise and encouragement for the cause of human rights under that kind of dedicated leadership.

The Chairman: May we continue on now? I am sure that is why I spoke, on behalf of all members, I thought. Thank you. We will proceed now with the next item of business. Mrs Marland, did you have some—

Mrs Marland: I think it is important to find out from the government members of this committee what they are willing to do in terms of where we go from here with the public hearings that were referred to this committee, so I would like to ask the government spokesperson, whoever he or she is, what the intention of the government is. No matter what the opposition members might propose for the future hearings of this committee, we are powerless to direct the future hearings of this committee by the very fact that there are three of us and six of the government members.

Mr Breaugh: You will never hear me make that kind of statement.

Mrs Marland: Could I could ask you, as the chairman, to have the government members tell us what the government plans are for the continuance of these public hearings?

The Chairman: You are asking the question, not I, and it is not up to me to ask them what their thoughts are. We had a discussion this morning between 9:30 and 10 o'clock. However, if any of the government members would like to clarify where they believe the hearings should go, we could all have an idea.

Mr J. B. Nixon: I am prepared to make a suggestion.

I think we have had an excellent set of hearings. We have heard from a wide variety of people in the community who have, in some cases, very divergent points of view, but there have been some common themes and I think the hearings have been very valuable. If there are others from the community who wish to make a presentation on the role and structure and mandate of the Ontario Human Rights Commission, it is important for us to hear from them.

Most important of all, it is important to hear from the new chief commissioner. She has been present and has had the opportunity to hear many of the submissions, but I think it is important to hear from her, not so much to hear her response to the submissions but to hear her views on where the commission is going, what she sees in the future for the commission and what its role, structure and mandate should be and will be. I think she could make an excellent contribution.

I think that is our view as to where the hearings should be going.

Mr Philip: This committee has the right, of course, to sit one day a week and I assume then that since the committee also has the right to set its own agenda, the agenda for this committee will be to continue with this matter

once the House reconvenes. I think we should aim at writing at least an interim report within a month, which would mean that we would have three more sitting days plus at least one or two days, and we may be able to get an extra evening in or something like that.

Mr J. B. Nixon: You recall our undertaking to Mrs Marland that during the period of her two-week absence we would not deal with any of these matters.

Mr Philip: So we may be talking about six weeks, but what we are talking about is at least four more sittings.

I suggest that during those sittings we should ask, first, the present chief commissioner to appear. We have had a request from a person who is no longer with the commission and who wants to appear, and I think that part of the policy of this committee should be to hear from anyone who has made a request. I am not in any way passing judgement on the merits or demerits of that person's comments or the contents of his letter.

I think there has been a list of some other people who have had complaints and are no longer with the commission, and I do not believe that they should be invited, at this stage, to appear. I think it would be appropriate, however, for legal counsel to go out and interview those people and find out whether or not they have any insights that would be useful to this committee within its mandate. I do not think that throwing dirty water at the past or regurgitating ancient history is useful to this committee, but it might be useful to find out from those people who, for whatever reason, are no longer members and who have publicly expressed some disgruntlement whether or not there are some insights which would be useful in our providing some constructive criticism.

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Mr Curling: Just a point of clarification: I notice after this there will be—I do not know if all the members here will be sitting and if it will be the same committee personnel. If it is not consistent, I cannot see that some of the evidence that is coming in can be continuous.

Mr Philip: You were not here, but I think we handled that at our earlier meeting when we said that could be simply handled through the whip's office, in which case it would be expected, Alvin, that you would get a substitution slip and you would be here for the duration, unless suddenly somebody appoints you cabinet minister again, in which case we would understand why you were not here.

The Chairman: It may not happen that this committee will be left—it is going to be up to the government whether it wants to proceed that way.

Mr Philip: But I am sure that we can get the understanding of each of our whips. Since we do have one of the whips here, she agreed this morning that it seemed reasonable to have members of this committee come back then and deal with this matter until such time as the matter is finished.

Mrs E. J. Smith: Just to intervene very briefly so it is clear because they were not all here when I spoke, I certainly agree that the same people should continue as a matter of principle. As to the amount of time and all that sort of thing, that will go to the House leaders and whips. I cannot speak to that.

Mr Philip: That is the amount of time which is set by the committee.

Mrs E. J. Smith: I am just saying that I agree with—

Mr Philip: It is the committee's responsibility, not the House leader's.

Mrs E. J. Smith: Well, within limits. However, I just do not want to be quoted on that. Okay? I only agree with you about the substitution.

Mr Philip: With that in mind, I think that the court should invite the present chair, we should invite Mr Raj Anand and we should invite the gentleman in question who wrote and asked for an appearance. I believe you have some other requests from one or two other organizations. Then we should have an agreement that since Mrs Marland is out of the country for two weeks, we will not sit for those two weeks—the committee members can deal with whatever other matters they have before them—and that we aim, I guess, at turning out an interim report in at least six weeks' time.

The Chairman: Mrs Marland, wrap it up, will you, if you have anything further? Is that agreeable, what has been suggested?

Mrs Marland: I am agreeable to the suggestion made by Mr Philip as long as it does not exclude having other people if, through those presentations we hear, there are other people the committee may want to invite. In any case, it would still be in the hands of the government members, I recognize, but I want to make it very clear that I am not agreeing to limiting today who it is we need to hear from, because it may be that the same thing will happen as has happened, that we realize we need to hear from other people.

The Chairman: Mr Nixon, wrap it up.

Mr Philip: The one other item I left off my list was that I think some of the on-line investigators should be invited in to talk to us about what they see as some of the problems that are causing some of these delays. I think that would be useful. I do not have anybody in particular in mind, but I am sure that the chair can give us a list of some of those who are investigators and ask them to come.

Mr Velshi: Just on what Mr Philip has said, I am not too sure we should be responding now to anybody who writes to us saying that he wants to come here and speak to us. I think the time limit is gone now. That letter we received was not because the person felt he had something to contribute to us, it was in response to what another witness had said. I am not too sure I would like to see that being entertained. If we want to call that person, let it be our decision that we need that person to come in, not because of a letter. If we get another ten letters, we are going to be stuck with that type of a response.

Mrs E. J. Smith: I think in a meeting which we held earlier we all agreed that in the report there might be recommendations to go on with. It would seem to me far better that we look at getting that report out and seeing where it is going to go. The kind of people you are referring to wanting their opinion would then respond to that report, because that is where we really need their advice on how to improve the system. The new report would call for a new focus which is what to do creatively in improving the system. That is

when I think it would be very useful to get the on-line people in to speak to us.

The Chairman: We have three people who have requested to appear before the committee. The clerk has to let them know that either they will not be heard or they will be heard. I am looking for direction from the committee.

Mrs Marland: Who are the groups?

The Chairman: I believe they are private.

Mr Philip: I was concerned a week and a half ago that there was an understanding, and maybe it is my misunderstanding, that there would be a fairly wide mailing list to groups that might be interested. When I found out that that had not happened, I sent out some 300 letters to groups I thought would be interested in this subject matter. As you can see, we got a very good report this morning from one of the people who responded in great haste and said he did not know about the hearings, and I think he made some valuable contributions. So I do not think we should judge by numbers. I doubt that we are going to get, you know, 50 groups asking to appear now as a result of my 300 letters. I think that some of the people who would have received my 300 letters found out in various ways through the grapevine and so forth and have appeared already.

The Chairman: I think the question is, are we going to accept them or are we not?

Mr Philip: I would move that they be invited to appear. I think you have Mr Stratton who asked for an appearance and I think he should be allowed to appear, since he asked. I do not think that this committee can be in a position of cutting off people who are asking to appear and present their views.

Mr J. B. Nixon: When I responded to Mrs Marland's request to indicate where we thought the hearings should be going, I thought I had made it quite clear. We think it is important to hear from the new chairman and any residual community groups who previously have indicated a desire to appear.

Some of my colleagues may not be aware that in an earlier steering committee I had indicated that if there were community groups that had written in before the end of the hearings indicating a willingness to appear, we would decide at our discretion to hear them. Having said that, I want to respond to Mrs Marland and Mr Philip.

I think Mrs Marland and I have a fundamentally different view of where these hearings should be going. That is something everyone has been aware of since day one, and I think it is time to bring the issue to a head. I think Mrs Marland should bring her motion. Prior to doing that, I would like to just indicate two things to her, and I hope I get a chance to speak to the motion briefly.

First, when you originally produced your notice of motion, I had understood the intention to be that it would be argued at the next regular meeting of the standing committee on government agencies next week; ie, that the seven-day notice period that normally runs with every notice of motion would run. You have decided to bring it on early, and I am quite prepared to have the matter dealt with at your convenience.

Second, again, something that you may not have understood, because your notice of motion does not respond to the issue, is that we do not think it appropriate for Mr Anand to come before the committee either, so I suggest to you that you probably want to amend your notice of motion to include a reference to him. I am quite prepared to accept any amendment you want without debate as a matter of courtesy to you.

The Chairman: Mrs Marland, are you bringing your motion forward?

Mrs Marland: Could the clerk just clarify something for me? I understand there is no requirement for notice of motion.

The Chairman: That is my understanding. Is that correct?

Clerk of the Committee: That subject is academic.

The Chairman: The motion is in order, if you want to put it.

Mrs Marland: It was as a courtesy that I gave it as a notice of motion. There is no requirement for a notice of motion, so what Mr Nixon has just said about what he understood was the intention about seven days and all that stuff is irrelevant. Is that correct?

1230

Clerk of the Committee: Yes, it is.

The Chairman: Do we want to proceed with the motion or are we going to adjourn? Are you proceeding with your resolution?

Mr Philip: My problem is that I would have to amend the motion, and that is going to be a long procedure, because I do not agree with the whole motion.

Mrs Marland: I have not called the motion. I am not calling it this morning.

Miss Roberts: She has changed her mind, then? She is not calling the motion?

Mr Philip: Wait a minute. If she is not, then I am moving a motion, because whether or not I think Mr Stratton has anything of any consequence to offer in terms of reference, I feel very strongly about a principle. The principle is that in the democratic, parliamentary, congressional system that I believe in, I believe that any citizen who believes he has something to offer a committee has a right to appear when there is a notice of public hearings.

We listened to people like Paul Fromm. I do not agree with practically anything that Mr Fromm has said over the years, but I patiently listened to Mr Fromm give his version of the world and I defend his right to do that, as long as he does not make libellous or slanderous statements or use language which is unacceptable in the parliamentary system.

So I think James Stratton has requested to appear and I defend his right to appear. Whether I will agree with him or whether I think his testimony is relevant is not the issue; the issue is his right to appear.

I also feel that since Mr Anand did initiate a number of innovations and did have some very strong views on the direction in which the Ontario Human Rights Commission should go, he should appear and he should be invited to appear. Therefore, I would move a motion---

Mrs E. J. Smith: Invited?

Mr Philip: Invited, yes. If Mr Anand does not wish to appear for whatever reason, I do not plan on asking for a Speaker's warrant or something.

I would move that, in addition to the chief commissioner and investigators and the remaining witnesses from groups that have asked to appear, James Stratton's request to appear be accepted and that Raj Anand be requested to appear if he so desires. I said in addition to the present chief commissioner and staff, as selected by the present chief commissioner, I suppose. I want to meet with a few investigators.

The Chairman: Are you prepared for any discussion? I will put the motion if there is none, but Mrs Marland has indicated she would like to speak.

Mrs Marland: The problem is that some of these discussions take place on the record and some off the record, so I just want to place on the record a response to the government whip member of this committee.

Mrs E. J. Smith: To be clear, I am here as a committee member.

Mrs Marland: All right. The whip for this committee has been Mr Nixon. I am responding to Mr Nixon.

Mrs E. J. Smith: I am here as a committee member only.

Mrs Marland: That is fine. I am responding to Mr Nixon.

I think that for Mr Nixon to say that there has been an understanding about which direction I want these hearings to go is unfortunately a breach of my privilege, because Mr Nixon cannot make a statement about which direction I wish these hearings to go. He can make an assumption; he can have a personal opinion; but he cannot say that it is generally understood which direction I want these hearings to go.

I think it is important also to reiterate the fact that the former chief commissioner, Raj Anand, on a number of occasions has said publicly that he welcomes and would welcome the opportunity to come before an all-party legislative committee for a full public inquiry or a full public meeting or whatever words you want to use. I am quite sure that when Mr Anand said he would welcome that opportunity to come before a legislative committee in this forum he was very sincere about it, and I think now not to support giving him that opportunity or that choice, as in Mr Philip's motion, would be contra to what Mr Anand himself has indicated.

I think it is also important to understand that my intention with these hearings is to re-establish once and for all the integrity of the Ontario Human Rights Commission, that commission being the most sensitive government agency we have in this province. It has been proven through the hearings that we have had this week that people who have problems against their own human rights feel that the Ontario Human Rights Commission is their place of advocacy. To quote the Minister of Citizenship—I think it is important that we put this on the record—when there was a motion of this Legislature to

refer this matter to this committee on 25 July, the Minister of Citizenship, Mr Phillips, said this in the Legislature:

"There has been a cloud over the Ontario Human Rights Commission, and I think this inquiry in an open way will help to get certain matters out into the open where we can look at them and make some recommendations to ensure that that cloud disappears.

"There have been a number of irregularities—inadequate priority given to identifying candidates of visible-minority groups in hiring; no employment equity program in place at the time at which certain important recruitments were conducted; a top-down approach in staffing—which I think the committee will want to look at. Of equal importance is that there has been a very serious morale problem at the human rights commission as a result of the series of revelations we have experienced."

I would respectfully suggest to the government members, unless they want to back down from the position of their own minister on 25 July, which I emphasize is almost two months after the Amin-Gordon report was released—so it is not before there was an interministerial investigation; it is after the interministerial investigation. So the Liberal government minister at that time recognized there was a need for the process that we have started this week, and I feel that Mr Philip's motion is simply a motion to continue the process that we have started; that is where there was an agreement to hear from those people who wish to appear before the committee. We spent thousands of dollars advertising for that purpose, and it makes common sense to invite the other people who are named by Mr Philip this morning because they have already indicated they would welcome that opportunity.

The Chairman: We will have Mr Nixon and then I would like to put Mr Philip's motion.

Mr J. B. Nixon: I would like to say that we fully support the desire and intent of the former minister's motion and we believe we are acting in accordance with that motion today. I also would like to say that we fully agree with Mrs Marland when she says that the human rights commission is perhaps the most important agency that this committee will deal with and that the government has established and that we are dealing with extremely sensitive matters as they affect individuals' rights. I suppose what we do disagree about is how we get there, how we conduct ourselves as a committee and what matters are important and what matters are unimportant or irrelevant.

If you will recall, Mr Chairman, the resolution that was agreed upon by the three House leaders, which set out the terms of reference of this committee, said—and it repeats itself two or three times—that our job is to review the mandate, structure, increased resources, the future mandate, role and structure of the commission with a view to making recommendations.

1240

It makes reference to one of the things that we should look at, and that is the Ministry of Citizenship's report commonly known as the Amin-Gordon report. We have had the benefit of the report for about two months and have had the authors before us. No one doubted that they were providing, in their words, "independent and objective information and true relevant facts," and no one argued with that.

We are now dealing with some very sensitive matters. We are dealing,

again, ultimately with the future of the commission—its future role, structure and mandate. We think our job is to look to the future, not to the past. We think that by looking to the past you affect the rights, feelings, careers and reputations of individuals who may no longer be with the commission; we think that by looking to the past you affect the interests of the commission which, by everyone's account, has been through a bruising period where the morale is a bit troubled, but is in on its way up the incline. They are recovering but they need time; people have told us they need time to recover. Dredging up old history and reiterating allegations does not serve the interests of the commission.

By bringing people forward from the past, we cannot deal with them to the same extent that Amin and Gordon did. Amin and Gordon spent hundreds of hours: they interviewed people, they examined people, they cross-examined people and they reinterviewed people. We do not have the opportunity to do that. We do not want to hear a vendetta, we do not want a vendetta. That is not the goal of this committee. It was not commissioned to inquire into one, to encourage one and to discourage one. Our job is to look at the future role and mandate of the commission.

Finally, the reason we believe what we believe is that our ultimate interest is the public interest, the public interest is in a fully functioning, strong human rights commission. That is what we should be looking to and that is what we should be working on.

I disagree with Mr Philip, and he did not use these words, when he seems to suggest that everyone has an absolute right to appear before this committee. That was never the understanding when we commenced our work. We understood that anyone who wished to appear before this committee would be chosen to appear at the discretion of this committee. No one has an absolute right.

In exercising that discretion as to who should appear and who should not appear, obviously we are going to consider what are they going to be telling us, what issues are they speaking to, what relevance does their testimony have, what can they talk about when they are before us. Our goal is to look at the future, role, structure and mandate of the commission. It is clear from Mr Stratton's letter, which is self-evident, speaks for itself and tells us what he is concerned about. He has made his point on the record: he is upset with something Mr Amin said about some unnamed individual. That has nothing to do with the future, role, structure and mandate of the commission.

However, inviting any of those five witnesses whom Mrs Marland wants before us invites us on the slope into the past, with no benefit for the future. That is why I urge the committee not to support Mr Philip's present motion or Mrs Marland's future motion.

The Chairman: Thank you. I am calling the motion at this time.

Mr Philip: The normal procedure is to allow the mover of a motion to sum up.

The Chairman: That is not normal procedure.

Mr Philip: That is the procedure in any committee that I have been involved in. Certainly in any committee that I have chaired, I have allowed the mover of a motion to have a minute to sum up his arguments.

The Chairman: You can run your committee the way you wish.

Mr Philip: I ask for that privilege now.

The Chairman: I will give you two minutes to sum up and then we will call the motion.

Mr Philip: What I have proposed is in the public interest. What the minister, and indeed what all members who spoke on this matter, has said in the Legislature is that a cloud was over the human rights commission.

At no time did anyone envision that we could have an inquiry into the human rights commission which was initiated as a result of certain revelations concerning hiring practices and which resulted in the resignation of somebody who is very highly qualified, and highly respected indeed, from a key post in this province and this key player would not be called or invited to appear before this committee.

Mr Nixon says the careers of people can be affected, that some of the people who are no longer on the commission may have their careers in some way affected. I say to you that this is very paternalistic. Let those people decide about their careers and how it will affect them.

All I am suggesting is that if Mr Anand wishes to accept an invitation from the committee to appear as a free agent, he has that right to make that decision. It may well be that Mr Nixon will be pleasantly surprised and Mr Anand may not wish to appear. But I say, let's invite Mr Anand to appear.

We have had testimony here before this committee, during these hearings during the week, that Mr Anand had initiated a number of positive actions and that those positive actions or reforms, if you like, had started before his resignation was tabled. Surely the committee, if it is looking at the future, should look at those and hear from him about those changes, which he saw as being necessary for the commission, that he initiated and that I assume the new chair is carrying out. Surely it is in our interests, when we are making recommendations for reform, to understand the reforms that Mr Anand then was requesting and that he had started and initiated.

There is another matter. We had, over and over again, testimony or concern about the independence of this commission. We have had one witness who suggested that somehow the firings were not the decision of Mr Anand but they came from some other sources. And when I expressed great alarm at that allegation, which is a serious allegation, it was dispersed by simply saying, "Well, when Mr Anand appears he will tell the truth, he will tell the story."

I suggest to you that those allegations are still on the record, and Mr Anand should be asked whether the decisions were entirely of his making or whether he had received instructions, in any form, from anyone other than within the commission as to who should be hired or who should be fired. That is on the record. That matter needs to be cleared up. To suggest then that Mr Anand should not be invited can only be seen in the community as a coverup, as the unwillingness of this committee to really remove the cloud which all of us agree has hung over the commission.

The Chairman: Your time has expired.

Mr Velshi: On a point of clarification, Mr Chairman: Before I decide which way I am going to vote, I would like to know—these five people that Mrs

Marland is talking about, have any of them requested, within the time period that was advertised—

Mrs Marland: On a point of order—

Mr Philip: That is not before you.

The Chairman: No, we are just dealing with Mr Philip's resolution, and I want to put the motion now.

All those in favour of Mr Philip's resolution.

Opposed?

Motion negatived.

Mrs Marland: All right. I have another resolution.

I move that this committee continue its public hearings and that the people who may be invited to attend will be named at the first meeting after the new session.

I am rather concerned. The reason I placed that motion is right now we do not have anybody coming before this committee, so my concern is that I have no guarantee that this public process will continue. As far as I am concerned, we cannot be through with this public process when we have yet to hear from people who work in the field. We had—

The Chairman: What is your motion?

Mrs Marland: My motion is that this committee continue its public hearings and invite people to attend those hearings. Those people will be named at the first meeting in the new session.

Mr J. B. Nixon: I think we can probably solve a problem that does not exist. There has been some agreement, I think, on a number of witnesses who should come forward. The three people from the community groups have indicated an interest in coming. The present chairman—I think we should hear from people in the field at the Ontario Human Rights Commission. We can do that at a subcommittee right now.

The Chairman: It will be up to the new committee.

Mrs Marland: You have just voted against a number of people from the community in voting down Mr Philip's motion, so right now we do not have any agreement.

Mr J. B. Nixon: I am putting a commitment right here. If you want to call the chairman, let's do it. If you want to call the three community groups, let's do it. If you want to talk about investigators and talk to the chairman about talking to some regional field people, let's do it. Let's not waste another meeting talking about our agenda. Then we can have some people here for the next meeting.

The Chairman: I am sure the new committee will deal with its agenda in the way that it sees fit and in a way that the hearings would continue without putting a resolution—

Mrs Marland: Are you giving a commitment, Mr Nixon, that these hearings will continue in a public, open forum?

Mr Philip: I move that the present chairman be invited to appear at the first meeting of the committee.

Mr J. B. Nixon: I am giving you a personal commitment that I can support that, but it is up to the House leaders. Everyone here is supporting it.

The Chairman: Mrs Marland has a motion on the floor.

Interjection.

Mr J. B. Nixon: Okay. To the extent that it is up to the committee, and that I can give that commitment from our side on the committee, that is fine, yes.

Mrs Marland: Vote on my motion, then.

Mr J. B. Nixon: No, because that is not your motion.

Mrs Marland: You place a motion then, Mr Nixon.

Mr J. B. Nixon: All right. I will place a motion.

The Chairman: Are you withdrawing yours?

Mrs Marland: Yes.

Mr J. B. Nixon: I move, subject to Harold cleaning up the language, that this committee call at the appropriate time the present chairman of the human rights commission, the three community groups—I understand they are community groups, and not the five that Mrs Marland has named—that have expressed a desire to appear before the committee and that we engage in discussions with the present chairman to determine who might be the best people from the field at the human rights commission to come forward and talk about investigative procedures, intake procedures and so on and so forth. I move that.

All those in favour of that motion?

All those opposed?

Motion agreed to.

The committee adjourned at 1253.

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